

THE
HISTORY
OF THE
CLEMENCY
OF OUR
English Monarchs.

The Usage Prisoners, who Surrender'd at
Discretion, have met with from their
Hands.

Compar'd with several Matters of Fact which
have lately occur'd in this Kingdom.

With an Account of the Manner of issuing forth
Acts of Grace and Pardon in former Reigns.

Written for the Information of the present
Age, and of Posterity.

ECCLESIASTICUS x. 3.

An unwise King destroyeth his People.

By M. Earbery

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THE PREFACE.

THE World may wonder to see a Treatise of this Nature appear so immediately after a General Pardon, and may imagine it would have done better before: But perhaps the Government would have thought that I had made too free with their Power, if I had presum'd to give them Directions in what Manner they should issue forth Acts of Grace and Pardon.

On the other Side, it comes out in such a Time, as no Man can think I design'd it as a Reflection upon the Act lately promulg'd: Because it was in the Press before I had the least Knowledge or Sight of the said Act; and all but the Preface, was compleatly finish'd before, so that I could not without a Prophetick Spirit (to which I do not in the least pretend) calculate this Book to make Reflections thereon.

If some will say, that I seem to regret the Fate of those Preston Gentlemen who were hang'd; I must needs confess, I rather wish'd they had died with more Honour: A lingering Sickneß, or the impetuous Sallies of a Feaver, would have redounded more to their Credit, than to come to such an End.

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It can be no Crime to pity the Sufferings of my Countrymen. The Bowels of Compassion, the Precepts of Christianity, and the mutual Relation Subjects have to each other, plead vigorously in their Behalf; and I should think my self not fit to live, if I could let my Blood freeze when I think thereupon.

Some perhaps will say, I reflect upon the Government, which acquiesc'd in their Fate.

To which I answer, that the Thoughts of my Heart are appropriated purely to my self. But as Application makes the Reflection, I shall fling the Load upon those who make too free with what I have said.

Slander is, what as a Christian I abominate, as I do also all false Constructions upon Words; and thus I leave such Men to themselves, to think of my Performance what they please.

For my Part, I have impartially consider'd Matters of Fact, which have occur'd in this Kingdom, and if I have been guilty of false Representations, I will take all the Charge upon me of reflecting upon the Government, and undergo the Pains consequential of so much Temerity.

If others are offended that I put my Name to this Book, let 'em know that I hate to wound in the Dark. I am not afraid to shew my Person or my Deeds to the Light; as I have entred upon Previous Resolutions to offend neither my God or my King.

Let the Guilty conceal their Names, and secretly blast the Reputation of the Good. For my Part I shall urge nothing, But what I shall justify to God, who knows the Secrets of our Hearts, and to the World who oftener condemns more thro' Prejudice than Sincerity.

What I have written, is in Defence of Mercy and Charity; 'tis in Defence of the common Rights of Mankind, and surely this can be no Crime with any Court, which pretends to Distribute Justice to the People.

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But if it is a Crime ; may blacker never spot my Soul, or disturb the Calm and Tranquility of my Mind.

What has that Man to answer for, who sheds innocent Blood? What a Question is it, whether his Pains in Hell will be sharper than his Earthly Torments.

But to give false Evidence against a Fellow Subject, and a Christian, to stain a guilty Land with additional Murthers, is surely a Crime not easily expiated, no Trivial Repentance will blot out the Remembrance thereof.

I do not directly charge this upon General Wills, but if his Evidence is contradictory, 'tis not all his Preiton Regiments shall make me Surrender my Honour and Conscience, and conceal the Truth.

This Heroick General, at my Lord Wintoun's Tryal gave in these following Depositions, upon which I shall make proper Reflections.

1 He tells the Court of Two Attacks made, but does not mention one Word of the Event, excepting stealing into an House.

2. The next Day about Two a Clock, General Forster sent one Oxburgh to offer to lay down their Arms and submit themselves, and hop'd he would recommend them to the King's Mercy which he refus'd, and told them he would not treat with Rebels.

If the General was resolv'd to treat with them in no manner whatsoever, he ought either to have hang'd the Messenger, or at least detain'd him from returning to the Town.

3. Upon this the Colonel was sent back, and Captain Dalzeel was sent out to desire Terms for the Scots, Wills Answer was, that he would not treat with Rebels, nor give them any other Terms, than what he had offer'd them.

Surely here is a Confession, that he did offer some Terms, and can this be construed-no Treating with the Gentlemen.

4. He

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4. He granted 'em 'till Seven a Clock next Day to consider; and sent Colonel Cotton in, to bring the Hostages, and yet all this was no Treating.

5. He agreed with them, that no Intrenchments should be cast up in the Streets, no People suffer'd to run out of the Town, and yet he made no Terms at all with these unhappy Men.

I would have the Reader observe, that all the Terms General Wills in his Deposition allows to have been propos'd to those Gentlemen, were that they should Surrender themselves to the Government's Pleasure; as tho' perishing in hot Blood was not much more agreeable than being cut off in cold. This is what General Wills in his Tryal expressly defines Surrendring at Discretion.

Moreover, if we examine Will's and Munden's Evidence, we shall find how much they differ from each other, and from even themselves.

Wills says, that they offer'd first to lay down their Arms, and submit themselves to the King's Mercy, and beg'd his Recommendation thereto. And that he refus'd to grant 'em any Terms.

Munden says, they first insisted upon Terms; and that Surrendring to have their Lives spar'd, 'till his Majesty's Pleasure was known, did not please them and they went away discontented. This is a flat Opposition to the other's Evidence.

Moreover, Wills blusters in his Evidence, and vapours upon no Occasion, for if they came to him with no other Design, than to Surrender to the Mercy of the Government; such Terms he never scrupled to grant, as appears by his own Confession. What then was the mighty Difficulty, which enrag'd the General to such a Degree, as to threaten the Destruction of every Man; a Sentence so like Captain Bluff in the Play; tho' 'tis my Opinion, if the Work had been so easy, he should had done it at the first Attack.

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Let the Reader judge, after impartially considering these Premises, whether the Evidence, in which the Lives and Fortunes of so many were concern'd, ought to be crowded with such Contradictions.

What General Wills calls granting no Terms, when he granted them all they at first came for, I cannot *nd.*

The only Difference I can possibly find out was, that he would not oblige himself to intercede in their behalf, and this he calls granting no Terms.

I must needs say, he kept his Word as to his Intercession in their behalf; he took particular care to recommend 'em only to be hang'd.

General Wills confesses, that they at last Surrendred at Discretion, and he defines Surrendring at Discretion thus.

That it was in our Power to cut them all to Pieces, but I would give them their Lives till farther Order.

But this Definition as he is pleas'd to call it, is opposite to the universal Opinion of Mankind, both of the present and past Ages, nor is there any General in Europe will agree to this Definition.

Moreover, if we grant his Definition and Application to be true: The Government by the same Rule might have cut into Pieces all the Prisoners in Newgate and in the Marshalsea, Three or Four Months after their Imprisonment, without any formal Tryal; which is false in Fact. For the Martial Law ceases from extending to Subjects, after the Sword is wrested from their Hands, unless they be otherwise Subject to their superior Officers, and therefore the Government could not have sent them farther Orders to cut them in Pieces in cold Blood, for if they had offended the Laws of the Country; take them into their Cognisance, and by them and not by Martial Law shall they be punish'd.

This

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This was the Result of a General's Speech, made to an House of Lords, as tho' not one Member of that Illustrious Assembly was vers'd in the Law of Arms, so much as to know what Surrendring at Discretion meant.

Who can help smiling at the General's Narrative of the Attack; not one Word of running away, nor of falling like mowed Grass. But the taking an House was what he most insisted upon; an House which the Enemy had left, rather for fear of it's falling upon their Head, than for any other Reason. And yet does he put thi house upon an equal Degree of Honour with taking the Town.

He concludes with an Account of not above 70 Men killed, and all this upon his Oath.

O Brave Man! thy Name shall be Registred in the Annals of Fame, and this Preface shall be thy Monument, when thou art gone to Sup with Derwentwater's Shade.

I shall beg the Reader's Pardon, for detaining him so long from the Subject propos'd, I have no more to say, than only to wish him more Patience in the reading, than I had in the writing upon this melancholy Subject, and so I shall leave him to his good Genius, and remain his hearty Well-wisher,

M. E A R B E R Y.

P. S. I have one Question to Demand of General Wills, viz. What Sentiments he had of Surrendring at Discretion in *Brihuega*; or whether the World would have had Reason to be sorry, if King *Phillip* had clos'd in with this brave General's Definition of surrendring at Discretion, in Relation to this Hero, who seems to understand the Law of Nations, as much as he understood Commanding in that Town.



O begin with *William* the Conqueror, when his Son the second time had rebelled against him; notwithstanding repeated Provocations; upon his Submission, the Father took him into *England*, employ'd him in the rough Wars of *Scotland*, where only Blows were to be got; and put not one of his Followers to Death; nor even to the Hardships of Confinement.

After he arriv'd to the Conquest of this Kingdom, he maintain'd such a precarious Post with so much Ease, and with so little Loss of Blood, (not that he wanted Severity in his Temper) as shew'd that he had Prudence to govern his Passions, and make the People love and fear him at the same time.

He landed in *England* upon the Pretence of a Title to the Crown; yet did not this Pretence make him severe upon those who oppos'd him: *Edwin* and *Morcar* Earls of *Northumberland* and *Mercland*, his most bitter Enemies, who endeavour'd even after his Victory to obstruct the Submission of the People; were only carried with him into *Normandy*, to prevent their making a Revolt; he kept them in some measure confin'd; and releas'd them before he died; nay *Daniel* observes, there was but one Nobleman executed in all his Reign, and he was a Man who had twice falsified his Faith before.

Daniel gives this Character of *William* the Conqueror:

“ For his Devotion and Mercy, the brightest Stars
 “ in the Sphere of Majesty. They appear’d above
 “ all his other Virtues, and the due Observation of
 “ the first (the Clergy who lov’d him not) confess’d
 “ the other was seen in the often pardoning, and
 “ receiving into Grace those who rebell’d against
 “ him, as if he held Submission satisfactory for the
 “ greatest Offence, and sought not to defeat Men,
 “ but their Enterprizes.

Yet no Man trampled more upon the Liberties of the People than himself, *factus iam de Rege Tyrannus* says an Historian: But he always was for dry Oppression, and took no manner of Pleasure in quartering those, whom he look’d upon to become his Subjects.

Likewise his Son *William* shew’d as signal Acts of Clemency to the Party under the Influence of the Bishop of *Baieux*, who put the unsettled Prince in Danger of the Loss even of his Crown; he first us’d his Endeavours to regain him by mild and gentle measures the most active in the Rebellion: Accordingly *Montgomery* and his Accomplices were brought off without any spilling of Blood, or discovering the least Signs of Revenge or ill Nature left behind: *William* drove the rest of the Faction before him into *Kent*, forc’d *Odon* Bishop of *Baieux* to surrender, and to promise that those who defended *Rochester* should do the same. But tho’ as it is suppos’d, the Bishop acted a treacherous Part, and joyn’d the Rebels in the Town; yet when he was taken again, he was dismiss’d upon his abjuring the Kingdom of *England*, and no publick Executions follow’d this mighty Disturbance.

He afterwards entred into Articles with Duke *Robert*, a Prince reduc’d to the last Extremity: But nevertheless it was stipulated, that those *Normans* should

should be restor'd to their Estates in *England*, who had been engag'd in the late Rebellion.

Various Struggles were carried on in the succeeding Reign of *Henry* the First, between himself and his Brother *Robert*; both had their different Pretensions to the Crown, but *Henry* had the Advantage of Possession. *Robert* landed at *Portsmouth* in an hostile manner; but a Peace was concluded, with a Pardon for all those who had engag'd in Arms for *Robert*; such Concessions did *Henry* make in Regard of the Dubiousness of his Title.

The Quarrel again in the Year 1106 broke forth, and ended in the intire Ruin of the unfortunate elder Brother, he was taken and imprison'd, but not one of his Adherents were put to Death; nay, he was us'd in that Confinement with as much Civility as a Prison could afford, till by endeavouring to make his Escape, Indignation prevail'd over the pitiful Sentiments his Brother shew'd before, and he was deprived of the use of his Eyes.

We shall find also in the Year 1102, a certain Lord held the Castle of *Arundel* against the King. But when it was taken, he was neither hang'd, drawn nor quarter'd; but only sent to breathe cooler Air in a foreign Land.

If we view the Wars between the Empress *Maud* and *Stephen*, the Fortune thereof underwent Variety of Change. *Stephen* was taken Prisoner by the Empress, and *Robert* Earl of *Glocester* by *Stephen's* Party, yet no publick Tryals, no Executions follow'd: The Dispute was at length amicably comprimis'd, and *Stephen* made *Henry* the Empress Son his Heir.

(a) *Henry* II. endur'd perhaps as high Provocations from his own Flesh and Blood, as History can pa-

parallel : Yet when he had conquer'd the disobedient Wretch in the Field, he entred into these following terms with the Rebels ; he made offer to his Son of half the Revenues of the Crown of *England* with four Castles therein ; or if he had rather remain in *Normandy*, half the Revenues thereof, and all the Revenues of the Earldom of *Anjou* ; and to his Son *Richard* he offer'd half the Revenues of *Aquitain*, and four Castles in the same ; to *Geffery* the Land that should come unto him by the Daughter of the Earl of *Conon* ; besides he submitted himself to the Arbitration of the Archbishop of *Tarento* and the Popes Legates, to add any Allowance more as in their Judgments should be held fit, reserving unto himself his Justice and Royal Power : But the Spirit of Ingratitude and Disobedience animated the wicked Son to refuse all Overtures of Peace.

Rebellions crouded upon the unfortunate old Prince, but he overcame the greatest Difficulties, beat the Earl of *Leicester*, took the King of *Scots* Prisoner, and put his Enemies to such a Plunge as to send for the Son to check the growing Successes of the Father, who had attack'd the Castle of *Huntingdon*, made the Defendants surrender to his Mercy, but sav'd their Lives and Members from the Punishment due to their Crimes ; he likewise took the Castles of *Framingham* and *Bungay*, which says *Daniel*, “ the Earl of *Bigot* held by force of *Flemings*, “ for whom the Earls Submission could hardly obtain “ Pardon. But in the End they were sent home.

But we must observe, they were Foreigners. But the Earl who was a natural born Subject of *England*, had his Pardon without Dispute. Our Princes never lov'd to sheath the Sword of Justice in the Bowels of their own Subjects,

Upon this the Son bends to an Accommodation, the Father glad to see the repenting Prodigal return

turn to his Duty ; receives him with open Arms, and an unbloody Peace was concluded.

(b) I shall next proceed to a Reign infamous for Cruelties, in which will appear, that tho' *John* was exquisite in a barbarous Roughness of Temper ; yet some Villanies were reserv'd for latter times, which he could never find out : They are the Fruits of more modern Ages, when Wickedness has been refin'd upon, and improv'd.

About the fifth Year of his Reign, he took his Nephew *Arthur, Hugh le Brun*, with the Barons of *Poictou*, and about two hundred Knights, and Men of Command, all which he carried away bound in Carts, and dispers'd into divers Castles, both of *Normandy* and *England*.

He took particular Care to murder his Nephew, and several of his Prisoners and Hostages ; not by any formal Trial, but by secret Treachery and Baseness.

The Consequence of which was, that he exasperated the Nobility in his Dominions in *France*, and was intirely stripp'd of all his Provinces therein ; so sure it is, that Mercy is the surest Guard to a Prince in his Throne.

The suppos'd barbarous Cruelties to *William de Brause* and his Family, by a Record in (c) *Rymers Fœdera*, will appear rather a Fiction of Historians than a real Truth. But however, a short Account of this matter leads me naturally to treat of Attainders and Outlawries. The Reader will find the Proceedings in such Cases very long and circumstantial ; and that such Methods were not recurr'd to without repeated Crimes and Provocations.

(b) Dan. p. 130.

(c) *Rymers Fœdera* Vol. 1. An. 1212. A. 14. Joh. p. 162.

The King himself thus sets forth in his Appeal to the World.

That that *William de Brause* ow'd him the Sum of Five Thousand Marks besides other Debts, which he took no manner of care to pay; upon which his Chattels were order'd to be seiz'd, which he had in *England*: But he remov'd all his Effects into *Wales*, upon which Orders were sent, that they should be there distrein'd.

But his Wife and Relations making humble Application, that the said *William* should have leave to repair to the King to satisfy the Demands: He came accordingly to the King at *Hereford*, and deliver'd three Castles into his Hands by way of Surety, that the Money shou'd be paid within a certain time, and promis'd moreover, that all his Lands in *England* and *Wales* should be tied as Security for the before-mention'd Sums; he also deliver'd his two Sons as Hostages, with the Children of some of his Tenants, as Pledges of his Faith and Honour.

Nevertheless, he took no care to satisfy those just Demands; but on the contrary, endeavour'd by force of Arms to recover the Castles from the Power of the King; and upon his Failure in that Attempt turn'd to a Village call'd *Liminster*, which he plunder'd and burnt, not without shedding the Blood of several of the King's Servants therein.

Upon sending a Force sufficient to correct such Insolence: The Rebel retir'd to *Ireland*, where he was entertain'd and cherish'd in Opposition to our repeated Commands, that he should not be protected in that Place.

They indeed promis'd, that if *William* in a certain space of time did not pay our full Demands, they would no longer receive him within their Bounds. But even in this they forgot their solemn Promises.

The King mov'd with just Indignation, was preparing an Armament to procure that which Justice and Lenity could not obtain. But *William de Brause* applied to his Justices in *Ireland* for a Pass, to repair to the King in *England* to procure a Pardon, and make amends for his past Insolence, which they granted upon the solemnest Assurances, that he would turn neither to the right Hand nor to the left, but proceed in a direct Journey to the King's Person. But he forgot all these serious Obligations, and was no sooner enter'd the borders of *Hereford*, than he enter'd into Cabals to destroy and injure the King.

But when he saw a Force approaching to reduce him, his Nephew applied to the King for Leave to treat with his Uncle and sound his Intentions, which was readily granted, as afterwards, that *William* should approach nearer, and enter upon a formal Treaty: He offer'd Four Thousand Marks as immediate Satisfaction for his Lands in *England* and *Wales*, to which Answer was return'd, that such an Agreement was not in his own, but in his Wife's Power to confirm: But that he might have a safe Conduct to go with the King to *Ireland*, to procure the Ratification of those Conditions; and if that could not be perform'd, another Passport should return him safe into *Wales* again. He refus'd these Terms, and when the King's Back was turn'd in his way to *Ireland*, *William de Brause* burnt his Mills and wasted his Lands.

At *Carickfergus* Advice came to the King, that *Maud* the Wife of *William de Brause*, with her Daughter the Wife of *Roger de Mortimer*, *William de Brause* Junior, with his Wife and Two Sons were taken Prisoners by *Duncan de Caryck*.

This produc'd Overtures on the Lady's Part, to pay Four Thousand Marks, provided her Husbands
whole

whole Estate should be preserv'd from any further Claim. However in three Days she repented of these Terms, and refus'd to subscribe thereto.

Upon King *John's* Return to *England*, he brought her Prisoner with him, who consented at last to pay Four Thousand Marks, and to enter into Bond to pay Ten Thousand more, if the said Agreement should be receded from.

In the mean time *William de Brause* continued Hostilities upon the Borders; and when the Bayliff of *Hereford* demanded him as a Malefactor, in order to proceed against him as an Outlaw; Orders were sent in consideration of this Agreement with *Maud*, to defer proceeding to those Extremities.

Upon his Return to *England*, at the earnest Petition of the Lady, her Husband was permitted to visit her, and afterwards to see the King, and confirm the Agreement his Wife had made.

But he soon forgot his Promise and privately withdrew out of the Kingdom, and his Lady absolutely refus'd to pay the Sum demanded, upon which according to the Customs of the Kingdom he was outlaw'd.

To witness the Truth of which, no less than Fifteen Lords set their Hands.

I conclude, that King *John* in these Days would have pass'd for a very merciful Prince.

I would have the Reader observe, how much he has been wrong'd by Historians, in Relation to his Cruelty to this Family, which might have pass'd for a true Piece of History, if this Record had not been preserv'd to confute the Falseness of the Reports. (d)

(e) We have not only King *John's* Testimony as to these matters of Fact, but we have the Evidence of Fifteen Lords, amongst whom was the Lord *William Ferrars*, a Nephew of the said *William de Brause*, and one who interceded with the King in his behalf.

(f) We find also Security given by King *John* to indemnify even the Archbishop of *Canterbury* and other Bishops, who had been engag'd in a most flagrant Rebellion; and in Conjunction with the Pope had promis'd Remissions of Sins to all who would endeavour to depose their Sovereign.

He also revers'd the Outlawries he had pass'd upon the Clergy, and declar'd that such Censures did not belong to Ecclesiastical Persons.

I would not have the Reader understand me as pleading for the Mercy or Goodness of King *John*: I am apt to believe with other Historians, that he was the Mock of human Nature, a Brute in the Disguise of a Man.

But even he could sometimes moderate his Passions, and be guilty of real, not pretended Acts of Clemency.

It will not be improper perhaps, to give the Reader the Contents of a Letter, wrote by Pope *Innocent* to the Clergy, to instruct them to mediate between the King and his Barons, which may serve for Instruction to the Princes of this present Age, and shew them better, than by consulting Machiavellian Politicks, to preserve a Crown; whether they ascend a Throne by Violence, or by natural Right, for both must have the same Methods of preserving what they have got, by whatever different Ways they procure the same. A Lawful King must govern his

(e) Mal. Westminster. A. 1213.

(f) Rymer's Foedera. p. 173.

Subjects by Clemency, and must rule them with the Affection of a Father for his Children; and an Usurper must imitate the Justice and Lenity of the Natural Prince; or his Possession will be as precarious as his Life: He must endeavour to banish from the Minds of the People, even a Notion that he governs only for himself, and to gratify his Ambition or his Revenge: He must take care not to discover the Nature of the Wolf lurking beneath the covering of the Lamb.

To return from this Digression, let us take a view of Pope *Innocent's* Letter. (g)

He tells the Clergy, he wonders they could unconcern'd view the Confusions of their Native Country, as tho' they had no Share or Part therein, and not endeavour to apply Lenitives to ease the Smart, and qualify the Rancour of the Wound. Nay he observes, they rather increas'd the Flame and blew the Coals, which were like to lay a flourishing Kingdom in Ashes, such unhappy Measures did they take, unknown to their Fathers before 'em.

He therefore presses upon them the Act of Oblivion, and burying in Obscurity those Feuds and Animosities, which took their Rise from the unhappy Quarrels between the Church and the State: That they should exhort the Nobility to be Loyal, and return to a Sense of their Duty to their Sovereign, by which Means they would more surely recommend themselves to his Favour, and more easily obtain those Privileges which should not be call'd for in a military manner.

He at the same time enjoyns the King to treat them with Mercy, and not to refuse their just Petitions.

(g) Rymel's Fœdera Vol. A. 16. John 1215. p. 196.

He wrote a Letter to the same Purpose to the Barons, in which he advis'd them to return to their Duty; and he at the same time engages that the King should be enjoyn'd to pardon what was past and could not be recall'd.

Such Notions of Oblivion and Mercy prevail'd, which now are despis'd as Solecisms in Politicks, and look'd upon as the Blunders of weak-headed States-men.

But God forbid, some Notions, in these Times maintain'd, should in succeeding Ages prevail: I have heard it asserted, that no Faith should be kept with Rebels, a Notion as bad as that no Faith should be kept with Hereticks; a Notion which would reduce our unhappy Country in Case of a Civil War, to a worse Condition than those in *Transylvania* and *Wallachia*, when the Turks and Christians are engag'd in War; surely it sounds contrary to the common Instinct of Humanity, to give Quarter to a foreign Enemy, and none to a Countryman, Friend or Brother.

But I am very confident putting Men to Death, who surrender with their Swords in their Hands, is not favour'd by many Presidents in our English History.

(b) *Matth. Westminster* relates of King *John's* signal and unparallel'd Cruelty, that when he took *Rockester* Castle, he sent the miserable Nobility Prisoners to *Corf*, where they scarcely escap'd with their Lives.

This Historian had not dipp'd his Pen in Presidents of Executions, after taking Prisoners of War: If the Imprisonment, even of those who had been engag'd in Rebellions had been as frequent as other Acci-

dents in History. He thought, good Man, that King *John* ought immediately to have discharg'd them from their Confinement.

He afterwards recover'd all the Castles he had lost in *England*, particularly one is mention'd by *M. Westminster*, which surrender'd upon Condition of having their Lives, their Liberties, and their Fortunes secur'd.

His Son *Henry III.* succeeded to his Kingdom, in a manner lost by the Treachery of the Barons, who call'd over the French to their Assistance, as People resolv'd rather to ruin their Country, than forgoe the sweet Hope of Revenge. (i) But their Stubbornness prov'd fatal to them; the King got an entire Victory, and took Prisoners *Saer Earl of Winchester*, *Henry de Bohun Earl of Hereford*, *Gilbert de Grant* lately made Earl of *Lincoln*, by *Lewis Robert Fitzwalter*, *Richard Monfichet*, *William Mowbray*, *William Beauchamp*, *William Mauditt*, *Oliver Harcourt*, *Roger de Cressy*, *William de Colevil*, *William de Ros*. *Robert de Roply*, *Ralph Chanduit* Barons; besides 400 Knights, or Men at Arms with their Servants Horse and Foot; (k) yet when we consider what use was made of this Victory, we shall find that it only procur'd a Peace with a general Pardon and Discharge for Prisoners on all Sides, without so much as bringing one Prisoner to a Trial, or seizing any Part of their Estates.

The Terms of that Treaty, as I find in (l) *Rymer's Fœdera* were these.

1st, That all those who were engag'd from the beginning of the War with *Lewis*, should have their

(i) Dan. A. I. Hen. 3. p. 149.

(k) Dan. I. Hen. 3.

(l) *Rymer's Fœdera* Vol. I. 1 Hen. 3.

Lands restor'd as at the first, and all the Privileges and Liberties of Subjects.

2dly, That the City of *London*, and all other Cities and Corporations should unmolested, enjoy their Franchises and Customs.

3dly, That all the Prisoners should be releas'd on both Sides.

4thly, That *Lewis* should release the Barons, and all other Persons from any other Oaths of Fidelity, Allegiance or Security they had sworn to him.

Thus ended a Civil War, which had laid waste the Kingdom of *England*, without pouring forth one drop of cool Blood upon the unhappy Land, involv'd enough in Guilt before.

About the 9th of *Henry III.* an Accident happen'd remarkable in its Circumstances, and which will abundantly confirm my Hypotheses, and give very much Light into the matter about which I treat.

(*m*) *Foulk de Brent* held out the Castle of *Bedford* against the King, *i. e.* his Brother *William de Brent* maintain'd that Post by his Orders. (*n*) The Castle was taken by Storm, for which the Garrison paid dear; and I believe were for the most Part cut in pieces or hang'd, for which they might thank their own Temerity, tho' a Reader of English History would imagine by the Infrequency of such Executions, that Death was not the Punishment due to Traytors in those times; and that *Henry III.* gave the first President.

(*o*) If we attend upon the Fate of *Folk de Brent*, we shall find that when he surrender'd in cool Blood,

(*m*) Matthew Westminster. A. 1224:

(*n*) Dugdales Baronage Foulk de Brent.

(*o*) Uxor autem illius quia nunquam vel Tyrannici ejus nec etiam Copulæ Maritati consensit cum filis ejus Thoma indemnos permanferunt, immanes a poena sicut a culpa, M. Westminster.

Who his Crimes were crying both against God and Man, in Consideration that he had serv'd the Crown faithfully before, his Life was sp'r'd, and he was only sent a Pilgrimage to bewail his Sins; his Lady upon her Petition had his Dowry, and her Son's Blood was not affected by his Father's Rebellion.

(p) *Richard Mareſchall* Earl of *Pembroke* oppos'd the King, and held his Castles against him, and all this was done about the Year 1233.

(q) *Henry III.* besieged one of his Castles, but was so far from the Thoughts of putting the Men to the Sword, or making them Prisoners for Life: That he only insisted upon delivering the Castle for Fifteen Days into his Hands, by which time he promis'd all the Abuses in his Government should be rectified.

Afterwards, as he lay in the Abby of *Morgan*, a Fryar came to him with Conditions from the King, that if he would submit to Mercy, he should have a large Proportion of *Herefordshire* to support him honourably, which he refus'd; but afterwards he was taken Prisoner, and died of his Wounds.

His Brother *Gilbert* upon the Intercession of the Archbishop of *Canterbury*, had his Lands deliver'd to him, and the Restitution of Honours as amply as his Ancestors had before.

Thus we see how careful our English Monarchs were, not to involve the innocent in the Punishment of the guilty.

(r) Indeed this Family gave Instances of a successive Generation of Rebels. Even this *Gilbert* joyn'd with the King's Enemies, and was justly

(p) Dugdales Baronage Mareſchall & Pembroke.

(q) Walsingham apud Neustria, 1233.

(r) Matthew Jaram 24.

punish'd by Providence with a miserable Death at a Tournament ; the Conduct of which Family made the King (when he was press'd by *Walter Gilbert's* Brother to grant Livery of his Inheritance to break forth into Passion in this manner. (s) Thy Father *William* trayterously permitted *Lewis* of *France* to escape out of *England* ; his Brother *Richard* was a publick Enemy, and *Gilbert* was kill'd at a Tournament against my express Prohibition, and thou wast there also in Contempt of me, with what Face then, canst thou lay Claim to that Inheritance.

However, the King in his cool Blood gave him his Lands, with a Pardon for the Insurrections in which he had been engag'd against him.

Surely the Reader in the end, will be convinc'd, that Oblivion was the peculiar Characteristick of our Antient English Monarchs, tho' they had to deal with stubborn and undutiful Children.

But because, some hot, furious Men in these times, are for condemning all those who have been unhappily engag'd in Rebellions, to the Sword, and will not grant Rebels the Liberty of Capitulations or the Law of Arms ; I would have them know, that the same Justice which allows Independant Powers the Law of Arms, allows the same for those engag'd in Rebellion ; for Foreign Princes have no more Right to Invade their Neighbours Territories, than Subjects have to Rise against their Prince. But the Necessity of Affairs gives an equal Right to both and a just Claim to that Law.

(t) *Theodosius* the Emperor, was judg'd by all the World to have been worthily Excommunicated by *St. Ambrose*, for putting to the Sword a whole Gar-

(s) Dugdales Baronage.

(t) Knyghton Lib. 2. p. 2447. Ap. Collect. Histor. Ang. Antiq.

rison at once, a Fact which carried Horrour even in the Relation.

In pursuance of my Argument, I shall give the Reader a perfect Relation of what happen'd in the 47th of *Henry III.* at the Assault of *Northampton*.

The King being advertis'd that several of the Barons were conven'd at *Northampton*, he commanded the Barons to surrender the City or give Hostages for Security of their Allegiance, otherwise he would fall upon them without Mercy : To which *Simon de Montefort* Junior, who govern'd in his Father's Absence, return'd this Military Answer, that they would hold out to the last Extremity. The King sent another Message, in which he invited them to a Parley, which being agreed upon, and fix'd to that Part of the Town which lay next to the Meadows ; *Philip Bassët* on the other Side, took an opportunity to fling down a side of a Wall, which open'd a Passage for 40 Horse to enter in Front : In the Scuffle *Simon de Montfort* was taken Prisoner. The Clergy distinguish'd themselves in this Action with so much Rebellious Zeal, that the King swore he would hang them all ; upon which every one made their Escape with what haste they could : Some run into the Castle, others into the Church, but very few of those of the common People got out of the Town ; however, the Storm was soon over without much Expence of Blood.

The King seem'd at first resolv'd to be as good as his Word, in Relation to hanging the Rebels ; but upon its being represented that the Chief of the English Nobility were there, some of whose Fathers or Relations were then engag'd in the King's Service, and that it would be dangerous to proceed to such Extremities, his Anger fell, and cooler Sentiments took Place both in regard to the Nobility and Clergy.

Those in the Castle considering their Inability for want of Provisions and other Necessaries to defend the Place, submitted to the King's Mercy, there were taken these following Nobility, *William de Ferrar*, (*Peter de Monfort*, *Baudwin de Wak*, *Adam de Newmarche*, *Roger Bertham*, *Simon Monfort Junior*, (who first set up his Standard against the King) *Hengeramus de Waterville*, *Hugo Gubyon*, *Thomas Mansell*, *Nicholas Leewake*, *Robertus de Newton*, *Philip de Bribi*, and *Grimbald de Pennevolt*. These were the Nobility taken, who were dispers'd into several Castles in the Country, and *Simon de Monfort* was sent to *Windsor*. (u)

A Peace was shortly after concluded after Variety of Fortune in Engagements, and not one Nobleman was punish'd in cold Blood, tho' some deserv'd it Heaven knows full well. But the Clemency of our abus'd English Monarchs has ever been as Notorious, as the shining of the Sun at Noon, I wish it could at least have rais'd some Sentiments of Gratitude.

Thus far I have carried the Reader thro' the Mazes and Intricaces of an inconstant British Genius drench'd in Blood and Rebellion. I may venture to say, no People are more inconsistent with themselves, or more difficult to give an account of, than they ever have been.

About the Fifteenth of *Edward* the Second, under Pretence of removing the *Spencers*, the Barons took Arms. The Mediation of the Queen induced the King to comply, and grant a general Pardon, which may be seen in the Appendix.

But immediately after a more dreadful Catastrophe happen'd in the following Manner :

(u) Dan. A. 1321.

The Queen was dispos'd to lodge in the Castle of *Leeds*, which belong'd to the Lord *Badlesmore*, but she was refus'd Entrance, and forc'd to shift for her self as well as she cou'd.

The King enrag'd with this brutish Affront offer'd to his Queen, march'd with an Army, takes the Castle, and hangs the Keeper, sends the Wife and Children of the Lord *Badlesmore* to the Tower, and seizes on all his Goods and Treasure,

Upon this a War broke out, which prov'd Fatal to the Rebels, and gave the first President of Publick Executions from the Time of *William Rufus*; to that Day in this Kingdom.

For the King taking such sudden and unexpected Measures, surpriz'd the Barons before they cou'd make such Preparations as were necessary to oppose the Torrent: Some were pleas'd to go with the Stream, as particularly the *Mortimers*; the Lord *Hugh Audley*, the Lord *Maurice Barkley*; who notwithstanding were not Truſted by the King, but sent to several Prisons.

The Earls of *Lancaster* and *Hereford*, withdrew from *Gloceſter* and went North: The King follows them with an Army, wherein were the Earls of *Angus* and *Athol*, and at *Burton upon Trent* gain'd a Compleat Conquest: The Sheriff of *York* intercepted them in their Retreat, took the Earl of *Lancaster* with other Lords, and brought them Prisoners to *Pomfret*.

Upon this Victory follow'd a dreadful Scene of Executions; the Earl of *Lancaster* was beheaded before his own Castle. The Lord *Roger Clifton*, the Lord *Warrein Liſle*, the Lord *William Tuchet*, *Thomas Maudit*, *Henry Bradburn*, *William Fitz-Williams*, *William Lord Cheney*, *Thomas Lord Mowbray*, *Joſeline Lord Danyl*, were all executed at *York*; ſhortly after the Lord *Henry Tryes* was Taken, drawn, hang'd

hang'd and quarter'd at *London*; the Lord *Aldenham* at *Windfor*; the Lords *Badlesmore* and *Ashburnham* (says *Daniel*) at *Canterbury*; the Lord *Gifford* at *Glocester*. All their Estates and Inheritances were Confiscated; ‘ and this was the first Blood (says *Daniel*) of Nobility, that ever was shed in this Manner in *England*, since *William* the First, which being such, and so much, as it open'd Veins for more to follow, and procur'd a most hideous Revenge, which shortly after ensu'd.

‘ But (says *Daniel*) afterwards being at Leisure, in a Calmer Humour it seems, he began to have a Sense of the Execution of the Earl of *Lancaster*, which he discovers now upon this Occasion: Some about him making earnest Suit to grant a Pardon to one of the Earl's Followers, (a Man of mean Estate) and pressing him hard thereunto, he falls into a great Passion, exclaiming against them as unjust and wicked Councillors, which could urge him so to save the Life of a most notorious Varlet, and wou'd not speak one Word for his near Kinsman the Earl of *Lancaster*; who, *said he*, if he had liv'd, might have been useful to me and the whole Kingdom. The Reader may make his Reflections upon this Story without my Assistance. Gratitude is a very strong Tie with all but Brutes, and I have known a pardon'd Rebel make the best Subject.

Let me also add, That those who are not willful, but accidental Rebels, and are Taken in Arms for one they believe to be their Lawful Prince, tho' they are so unfortunate as to be mistaken, ought to be tenderly us'd; for they are the best Blood in the Nation; they are Men willing to sacrifice their Lives for Justice; and of such Men, a Prince ought not to be afraid; he has nothing to do but to clear his Title, and he is sure of making them his firm and lasting Friends. 'Tis true *Henry* the Fourth did

not love such Men, because he was an Usurper, and therefore he cut off the bravest Man in that Age, for an Expression which would have endear'd him to a Lawful King.

I cannot forbear saying when a Prince destroys such Men, he pours out his own Vitals, and bereaves himself and his Kingdom of their best Supports.

I am sure in the Body Natural it's proper to keep the best Blood and part with the bad. But some Politicians will not allow this to hold good in the State ; they are for pouring forth the rich Blood of a Nation like Water in our Streets, and for maintaining a crude and indigested Mixture of Heterogeneous peccant Humours, which in the End must Ruin the Patient, and lay the Foundation of infinite Diseases, which will infallibly over-run the Body.

Does any Man think, that because a Rebel may sometimes find his Interest in joining with a Lawful Prince, that he is therefore to be encourag'd? Cou'd those Presbyterians who brought in *Charles II*, forget their Rebellion? Did they not endeavour to pull down with one Hand what they built up with another? And are they not at this Day, the most bitter Enemies to his Family? Alas, the very Loyalty of such Men is Rebellion, because it proceeds from that Principle, and their pretended Honesty is but Occasional.

I hope the Reader will pardon this Digression, which I was lead into, by contemplating the Folly and Rashness of King *Edward II*, in pouring forth so much Blood, which afterwards prov'd his Ruin, and he liv'd to want it for his own Defence. Such Executions only pours Oil upon the Flame, which at last spread even to his Sacred Person, and brought him to an untimely Grave.

I cannot therefore but blame the crude Politicks of those Men, who direct a Prince to maintain a Crown

Crown by mere brutal Force, without any regard to the Love and Affection of the People. Revenge will be the continual Subject of their waking Thoughts, and of even their Dreams, while the Tyrant sleeps under the Durance of Bars and Chains, and perhaps with a Treacherous Guard.

But this Observation I have made in the World, That Minds continually fix'd upon Revenge, will sometime find an opportunity to Exercise their Fury upon those they hate, who perhaps vainly fancy themselves secur'd from the Efforts of unarm'd Malice, and impotent Rage.

Away then with Machiavellian Politicks, only adapted to gratify the Disposition of a Cruel Monarch. They will never make a Kingdom flourish or answer the Ends propos'd.

How unhappy did these Politicks prove to *Edward II*? A few Years shew'd him the Difference between the Love of his Subjects, and a Servile Conquest, which alas! was only like the glaring Light of Sun just entering into a Cloud, when its Glories were just about to be overwhelmed by a Tempest.

I would have the Reader observe, That Acts of Indemnity have never done hurt, and never more good, than when offer'd to Rebels in Arms.

I would have the Reader consider the Conduct of *Richard II*, in that terrible Rebellion headed by *Wat Tyler*.

The Wretches omitted no barbarous Cruelties, that Madness and Rage join'd together could inspire them with, not omitting even Rudeness and Incivility to the Person of the King, who was forc'd for some Time to comply with their Demands, and let

them take out of the *Tower* his Friends and execute them before his Face.

The King with one Act of Grace out of Sixty Thousand Men dissipated Ten Thousand, and sent them to their Homes; a Victory which cost him not one Drop of Blood, and yet was more compleat, than if he had sent his Guards and cut them in Pieces, because he gain'd so many Hearts by his Clemency, which his Sword would have cut from all Possibility of being either his Subjects or his Friends.

The rest he won by Presence of Mind, and Condescension, and after the Death of their Leader *Tyler*, a new Pardon intirely dispers'd the rest.

Some of the Nobility gave pernicious Council, and I suppose at the Bottom were no great Friends to the King; they advis'd him to hang Four Hundred by way of Terror, which the King would by no means consent to; but only order'd that the City should give them no Entertainment, and that the Heads of them should be apprehended and legally punish'd.

Norfolk, *Cambridgeshire* and *Suffolk* were at the same time infested with Rebellions, carried on with an equally cruel and barbarous Hand: Yet were they suppress'd by the Bishop of *Norwich*, at the Expence only of their Leaders without imprisoning, starving in Jail, and harrassing with Tryals, the poor misled Commoners, who were dismissed with Impunity.

The next Reign, if it be lawful to call it one, was stain'd with innocent Blood, and darkned with the Executions of Men, who bravely stood up in the Defence of Justice: They were branded with the odious Name of Conspirators, and their Heads adorn'd *London Bridge* with conspicuous Monuments of unfortunate Loyalty; of which even Dr. *Kennet* is pleas'd to say, that tho' a just Punishment is favour'd

your'd so much of Cruelty, that many grave Men were discontented at it, and spar'd not to say, *That in a short time they should wish, they still had King Richard for their Governor, the Faults which proceeded from his Remissness and Mildness being more tolerable than the Cruelty of their new King.*

And where did this Cruelty stop, but in the Murther of the abandon'd abdicating King.

However, *Henry IV.* tho' hated by the Clergy, did not think fit to execute the Bishop of *Carlisle*, but granted him a Pardon, and us'd him as a Man of Honour, who had ever been his open, fair and candid Enemy; and in all Probability Archbishop *Scroop* would have met with the same generous Usage, if he had been ever equal and just to his Principles: But he was one of the Compliers who introduc'd *Henry IV.* to the Crown, and upon being disoblig'd, turn'd Loyal to gratify his Humour, and perish'd in the Cause. (x)

I must needs say, the Execution of Clergy-men is the most impolitick Step a Prince, unless in Cases of extreme Necessity, can take: Their Order is sacred, and Violences offer'd to their Persons is generally interpreted Violence to the Messengers of God; and consequently to himself, whom they represent; their Crime sure ought to be very notorious, which can break thro' a Character of that Nature. Moreover, the Faults of such Men are better conceal'd than expos'd in such a Manner, as may cast a Slur upon Religion, or induce Contempt upon that Sacred Order.

If we consider how decently the Vestal Ladies were executed under Ground, that the People might not see them or think of their Crimes, we shall find

it was done in Respect to their Character. How different is this from dragging a Presbyter of a Christian Church in a Cart to *Tyburn*, and to share a Fate adapted to Felons and Murtherers. A Spectacle of this Nature, I once beheld with my own Eyes and I thought Hell, Chaos, and Earth had shaken Hands together.

This makes me wish that the Laws of our Country, in that respect, were in some Measure regulated, that Religion, which is the firmest Cement of the Laws, may not be brought to Contempt.

If Punishment lose its End, it ceases to be Punishment, and becomes Rack and Torture upon the Bodies of Men ; but if the Punishment is so contrived that it hardens and encourages the Spectators, it most certainly loses its End.

An Execution of this Nature, is only preaching to the Spectators in this Manner ; Gentlemen, you see here, that Religion it self is a Cheat, those Persons who us'd to advise you with so much Earnestness to be regular and good, are resolv'd themselves to give no Examples of this Nature ; they believe nothing of the Story, as you may plainly see by this Gentleman, who is going to suffer for what he earnestly advis'd others to avoid.

Surely such a Speech would be an Encouragement to others to cast away the Fears of another World, whatever they pretend in relation to this ; and 'tis my humble Opinion, when the Fear of eternal Death is taken away, *Tyburn* will grow into Contempt.

Does any Man think it would not make an admirable Jest, with the Candidates for that Post, to see *Paul Lorrain* himself attend them in a worse Capacity, than that of a Chaplain ; suffering for those Crimes he has often exhorted others against ; would not this be a great Consolation to the Melancholy
Tribe

Tribe in their last moments, and an Incitement to some of the Spectators to go the same Way.

I have made this Digression upon the Account of the Bishop of *Carlisle*, who had the Happiness to feel some Influence of *Henry IVth's* Clemency, or rather Cunning: He knew such Executions could not please the People: For when Learning, Piety and Integrity center in one Man, and he is distinguish'd for that only Reason to be hang'd, 'tis such a Sacrifice as is worse than making our Children pass thro' the Fire: 'Tis a Preliminary the Devil generally insists upon, before he will enter upon a formal Treaty with a Nation. He knows very well they must comply, and that when they have left their God, they have no where else to fly for Protection, but to him.

To return to the Clemency of *Henry IV.* when a more dreadful Insurrection broke out, under the Conduct of the Earl of *Northumberland*; before he engag'd; he first tried all amicable Means; he did not immediately fall without any Remorse or previous Treaty upon his Country-men, as if he wanted an Excuse to put as many as he could to the Sword. 'Tis true, when he was forc'd to fight, he beat them, and took Prisoners the Earl of *Worcester*, the Baron of *Kinderton*, and Sir *Richard Vernon*, whom he beheaded.

But the Earl of *Northumberland*, who was not in the Battle, but retir'd to *Warkworth*; upon a Message from the King to require him to submit to Mercy came into him at *York*. The Consequence of which was, that he sav'd his Life, kept him in Prison till the Ferment of the Trouble was over, and then restor'd him to his Liberty, but depriv'd him of his Estate and Honour for the present: Yet afterwards restor'd to him even that, so far was he from taking Advantage to be cruel and oppressive,

or at least so bad, as some since have been, particularly *Oliver Cromwell*.

Thus ended for that time the Struggles for the dying Liberties of the Nation, and the whole was clos'd with a Pardon (y)

I would also have the Reader observe, that during these Confusions, *Henry IV.* took particular Care to prevent the Licentiousness of the Soldiers, and others in plundering, which may be seen in the Appendix. (z)

For surely it is Madness in a Prince, who designs to keep a Kingdom, to encourage the Spoils committed in his own Dominions: 'Tis the same as if a Man should burn and waste his own Estate, tho' in the Hands of one he expects to recover it from; for the worse Usage it receives before, in the worse Condition will it come to his Hands.

'Tis surely barbarous for a Prince to use his Subjects like foreign Enemies, and expose even the Innocent and the Guilty to the Insult of a military Force, which in my Opinion is the worst Discipline a Nation can come under.

However, the Usurper took care, that neither the Rebels nor his own People should be plunder'd, nor their Persons and Estates be precarious for want of an Act of Indemnity, which the Reader may see in the Appendix. The Conduct of the King towards the unfortunate Earl of *Northumberland* shall next be insisted; and I would have the Reader previously consider, that this Earl was the first Person who rais'd the Insurrection, was the Head thereof in its Heighth, and surrender'd to Mercy to the King

(y) Appendix N. 3.

(z) Appendix N. 4.

at *York*. (a) A Parliament was call'd in the fifth Year of *Henry IVth*, in which the Chancellor recommended to them in the King's Name the Case of the Rebels, who had been beaten at *Shrewsbury*.

This was no Recommendation to have 'em hang'd, or to impeach them, after they had the Misfortune to be Prisoners of War, but to pass an Act of Oblivion. On *Friday Feb. 18.* the Earl of *Northumberland* came into the Parliament before the King and the Lords, and there by his Petition to the King acknowledg'd to have done against his Allegiance, and namely for gathering of Power, and giving of Liveries, wherefore he prayeth Pardon, and the rather for that upon the King's Letters he yielded himself, and came to the King into *York*, whereas he might have kept himself away.

The which Petitions the King deliver'd to the Justices by them to be consider'd, whereupon the Lords made Protestation, that the Order thereof belong'd to them, and so they as Peers of this Parliament, to whom such Judgment belong'd in weighing the Statute of 27 *Ed. III.* touching Treasons, and the Statute of Liveries made in the King's time, adjudg'd the same to be no Treason nor Felony, but only Trespas finable to the King.

For which Judgment the said Earl gave great Thanks to the King and Lords, and at the Request of the said Earl, he the said Earl was then sworn to be true Liege-man to the King, to the Prince the King's Eldest Son, and to the Heirs of his Body begotten, and to every of the King's Sons, and to their Issue succeeding to the Crown of *England*, according to the Laws; and that done, the King pardoneth the said Earl, his Fine and Ransom,

(a) *Sir Robert Cotton's Abridgment of the Records* 5 Hen. 4.

And on this Day the levying of War of the said Sir *Henry Percie* and others was adjudg'd Treason by the King and Lords in full Parliament.

On the said *Saturday* the Commons gave great Thanks to the King in full Parliament, for the Favour shew'd to the Earl of *Northumberland*. The same Day at the Request of the Commons, the King commanded the Earls of *Northumberland* and *Westmorland* in Token of perfect Amity, to kiss each other in open Parliament, and to take each other by the Hand thrice, which they did, and so often they kiss'd each other as they took Hands, being thrice, and promised that their Tenants and Men should do the like.

Friday the 22 of *February*, at the Request of the Commons, the Earls of *Northumberland* and *Dunbar*, in Token of Amity before the King and the Lords, took each other by the Hand and kiss'd one the other.

The same Day at the Request of the Commons, the King in full Parliament affirmeth, the Archbishop of *Canterbury*, the Duke of *York*, the Earl of *Northumberland* and other Lords, which were suspected to be of the Confederacy of Sir *Henry Percie* to be his true Liege-men, and they nor any of them should not be impeach'd therefore by the King or his Heirs at any time ensuing.

I observe with what Tenderneſs the Earl of *Northumberland* was received into Grace, how much the Commons of *England* interested themselves in his Behalf, and how strenuously he insisted upon his Surrender to Mercy, which Plea evidently sav'd his Life.

The Earl however was pleas'd to try once more to reduce the Usurper to Reason, and perswade him to resign the Crown to the right Heir, by joyning
with

with Archbishop *Scroop* in an open Rebellion, which proving unfortunate, he fled into *Scotland*.

The Archbishop, the Earl *Marshall*, with several others, were taken treacherously by the Earl of *Westmorland*, during a Treaty of Peace. The Earl promis'd him his Safety, but when he deliver'd his Prisoners to the King, he thought himself discharg'd from the said Promise, and the Archbishop was barbarously murder'd in cold Blood, under the specious Form of Law.

I am not oblig'd to justify the Earl of *Westmorland* in this Conduct. A certain great General in a late Reign (as in its Place shall be shewn) had more Honour than to suffer such an Execution to be perform'd, however deprav'd in their Sentiments of Honour, as some People at this time are, or at least seem to be.

These Men of whom I cannot speak without Indignation, have the Assurance to affirm, that an whole Body of Rebels ought entirely to be made Sacrifices or Examples: That the poor miserable People ought to be starv'd in Goals, to be loaded with Irons, and oppress'd to Death, if they have not the Favour at least to be hang'd, all which is so cruel, so unpresidented, that I think it's fit only to be Patronis'd by such Men, who are the pretended Advocates thereof and by none else.

Let them Examine what I have already produc'd, and if they please, they may go with me to the End of the Chapter; they will find our English History very thin of Presidents of such a Nature.

Perhaps there never was a more notorious Rebel than *Jack Cade*, for Cruelty, Avarice and Pride, yet says Dr. *Kennet* himself, only *Jack Cade* with some of the Authors and Leaders were executed out of Five Hundred Persons, who were obnoxious to Justice and in the Power of the King.

By this time I have brought the Reader within View of a great Scene of Action, which made *England* the Theater of Horrour and Confusion.

The Nation for many Years had slept quietly under an Usurpation, their thoughts were little disturb'd about injur'd Heirs, or the Justice of a Cause sunk under Oppression and Misfortunes: But God, whose all-seeing eye will not ever regardless view the Cause of Abandon'd Princes, gave the Duke of *York* an opportunity to assume Pretensions, Just in themselves, and which wou'd have had the greater Appearance of being so, if they had not been so long neglected, and in some measure flurr'd by his taking the Oaths and acknowledging the Usurper.

I cannot forbear borrowing Part of a Paragraph from Doctor *Kennet*, (b) in Relation to a Contrivance, mean in it self, which the Duke of *York* us'd to blast the Reputation of an Infant; the Paragraph runs thus.

For Queen *Margaret* was deliver'd of a Son at *Westminster*, Octob. 13. who was shortly after Christned by the Name of Edward, but the Yorkists who sought to establish the Duke of *York* and his Family in the Throne, and were hot in contriving the Ways to it, spake disgracefully and scornfully of this Birth, and gave it out, that the King was insufficient and unable to get a Child, and therefore it was an Adulterous Brat.

But others thinking this Slander too notorious, because the King was not above two or three and thirty years old, and might well enough be suppos'd able to father a Child, unless a natural Impotency could be prov'd against him, which neither was, nor could be denied, not that there was a Child; but dying soon after it's Birth, the Prince had another Child put in it's stead. The King and Queen were much disturb'd at

(b) *Kennet's History of England*, Vol. I. p. 410.

these vile Reports of their Enemies; but the King was not at all displeas'd with the Queen, which shew'd he had no Suspicion of her: And it can't be reasonably suppos'd, that a Person of such eminent Piety as the King was allow'd to be by his Enemies, would be privy to so ill a Design, as to accept of another's Child for his own; so that the Satisfaction which the King took in the Birth of the Prince, and testified in Feasting the Court, and creating divers Noblemen as his two Brethren by his Mother's Side, he made *mund* Earl of *Richmond*, and *Jasper* Earl of *Pembrook*, must be allow'd Arguments sufficient to clear the Queen's Innocency with all Impartial Persons, tho' they would not satisfy their Enemies, who were resolv'd to deprive both Father and Son of the Crown.

Perhaps Doctor *Kennet* has here cast a Bone in his own way to pick, which I leave to his serious Consideration. I shall only observe, that nothing could be more infamous in the Duke of *York*, than to blast the Fame of those unhappy People, who had Afflictions enough, otherwise without Lies of such an improbable Nature.

Could any thing be worse than to injure an Infant in it's Nurse's Arms, even recent from the Womb.

To defame a Prince renown'd for Piety of Life and peculiar Integrity, to blast the Character of a virtuous, tho' unfortunate Lady.

Sum up all these Crimes into one Fact, and see if all the Powers in Hell can match it.

But to return from my Digression, which I must desire the Reader to pardon, because it was design'd for his Benefit. (c)

The Duke of *York*, at last, took up Arms, and reduc'd the King to an inglorious State of Servitude:

He was a Prisoner at large; he had the Name of a King, and the Duke of *York* had the Power.

A Pardon was the Consequence for all Treasons committed: A Pardon the most exact, perhaps of any that ever was penn'd; clogg'd with no Exceptions, but it included Fines, Amercements, and in short all manner of uneasiness, under which the Subject could labour; and I think it deserves to be a President for all Pardons since.

The Usurper *Henry* the 4th, issu'd out a Pardon with an ill Grace: *Henry* the 5th, by Prescription, was almost ingrafted into a Right; besides the Latter was a Man of Piety which the other was not.

I would have the Reader observe, that in *Jack Cade's* Rebellion, a Parson was taken, but the King's Piety was so great, he would not suffer him to die, but granted him a free Pardon, which I have set down in the Appendix, for any Man to read without Spectacles. (d)

There was also a Tumult, in the 35th Year of his Reign, which gave the poor unfortunate Prince an Opportunity to shew, that he had more Goodness and Mercy than Usurpers of the first Rate generally have: He hangs but Three for the same Riot.

In short, 'tis Mercy alone which secures a Throne, whether procur'd by Violence, or it be the Gift of God. Acts of Oblivion have dispers'd more Rebellions, than the open Violence of the Sword: Thus *Henry* the VIth. sent a formidable Army home, under the Conduct of the Duke of *York*, an injur'd Rival. What Blood perhaps wou'd have stain'd the Western Plains if such mild Usage had not been recurr'd to? As for the private Soldiers, (says *Dr. Kennet*) who by the Retreat of their Leaders, were left to the King's

Mercy, they were all pardon'd, except some few, who being remarkable for their Forwardness of their Rebellion, were some of them fin'd, and others hang'd and quarter'd.

I do insist upon it, that private Centinels and Servants, unless in a Storm, are not liable to be punish'd with either Death or Imprisonment. They are the Instruments, and not the Contrivers of a Rebellion, and the Custom of all Nations has been to dismiss them, unless the War is not ceas'd, and there is a Possibility of their being again employ'd to the prejudice of those under whose Power they are.

The Consequence of this Misfortune, was the Attainder of the Duke of *York*, his eldest Son, the Earl of *March*, with several others. As the Act of Attainder is tedious and very long, I shall give the Reader Sir *Robert Cotton's* Abstract, as I find it in his *Abbridgment* of the Records.

First, A Commemoration of the King's great Care in bringing the said Duke up, and of the manifold Benefits to him shew'd.

The Confederation of the said Duke with *Jack Cade*, to be advanc'd to the Crown. The Duke's coming out of *Ireland* with Force to the King's Court and Presence. The Duke's Practice to be Protector. The Duke's Intent to raise an Army against the King at *Dartford* in *Kent*. His Submission and Oath to the King in *Paul's* after the same.

The Duke's Oath at large.

The Duke's Confederacy with the Earl of *Warwick* and *Salisbury*. A Rehearsal of the King's sundry Benefits shew'd to the two Earls.

The Battle at *St. Albans*, at what time the Duke of *Somerset*, the Earl of *Northumberland*, and the Lord *Clifford* were slain; and the Pacification made by the King between the Heirs of the said Duke and Earls slain, and the said Duke of *York* and two Earls.

The King's Pardon granted to the said Duke and two Earls, and their Promises of due Obeysance, with Remuneration of sundry Benefits to them after shew'd.

The Ambition of the said Duke and Earls ; their new Oaths and Promises made to the King ; their Policies in not coming to the Council ; for their readiness in coming together being far a-sunder.

The Expedition of the Earl of *Salisbury*, with *Thomas* and *John Newill*, Knights, Sons of the said Earl ; *Thomas Parkin*, *William Stanley*, Esquires, Sons to *Thomas Lord Stanley* ; and *Thomas Oringe of Tongue*, in the County of *York*, with some Men and Banners display'd on *Blore Heath*, on the Feast of *St. Matthew*, Anno. 37.

James Lord Audley slain at *Blore Heath* in *Staffordshire* by the said Earl, and *John Lord Dudley*, with sundry others taken Prisoners. The King pursuing them by the space of 30 Days and Nights. The King's Pardon to them offer'd and refus'd.

The Assembly of the said Duke, *Edward Earl of March*, *Richard Earl of Warwick*, *Richard Earl of Salisbury*, *Edmund Earl of Rutland*, *John Lord Clinton*, *John Wenlock*, *James Pickering*, *John Coniers*, and *Thomas Pane*, Knight ; *John Bourchier*, *Edward Bourchier*, Esquires, Nephews to the said Duke. *Thomas Colt of London*, Gentleman ; *John Clay of Chishunt* in *Herefordshire*, Esq ; *Roger Egerton of Shrewsbury*, Esq ; and *Robert Bold* Brother to *Henry Bold*, Knight, who with sundry others, pitched their Field at *Ludlow* in the County of *Hereford* on *Friday*, the Vigil of the Translation of *St. Edward*, in Anno 38.

The Duke pretended to his Company, that the King was dead, for whose Soul Mass was said in the Duke's Camp.

The King's Expectation of the Duke. The Duke's Ranging in Battel. The fortifying his Ground with Carts and Guns just before his Eschirmishes made.

His

His Ambush laid. And his Meaning suddenly to have surpriz'd the King's Host.

The Departure of the said Duke and Earl out of the Field about Midnight, under colour to repose themselves about *Ludlow*, and their Flight into *Wales*, for that their Army fainted and submitted themselves unto the King, who granted to them Pardon.

The Attainder of the said Duke, Earls, and others aforesaid Persons, as Traytors. *Alice*, the Wife of *Richard* Earl of *Salisbury*, *William Oldball*, Knight, and *Thomas Vaughan* of *London*, Esq; were attainted as Traytors for procuring the three Sons aforesaid.

All and singular the Hereditaments of the said Duke, and others attainted in Fee, or Fee-tail, are forfeited.

Richard Gray, Lord *Powis*, *Walter Devereaux*, Esq; and *Henry Radford*, Knight, being in the Field with the Duke at *Ludlow*, are pardon'd, but all their Hereditaments as before, and other Profits are forfeited.

Sundry Provisions, as well for Goods as Lands; as touching the Forfeiture of the Lord *Gray*, and Sir *Walter Devereaux*, the King would be advis'd.

We may find here that Attainders were grounded upon evident Matters of Fact, specified with all their Rebellious Circumstances; one wou'd think by this Act, the Duke of *York* had done but just enough to draw down an Act of Attainder upon him.

I remember I once read an Act entitled, *An Act for Attainder of the pretended Prince of Wales*, and there was one Fact therein charg'd upon him which he could not be guilty of, *viz.* Contriving the Acts of Parliament made for settling the Succession; which Acts, as I remember, were subsequent even to the Attainder, or at least, just upon its heels. This Mistake I attribute to the profound Concern, the Compilers of the Act, where in to preserve our Religion, Laws and Liberties.

I also observe, the said Person just now mention'd, cou'd be but just past Thirteen Years of Age when he was guilty of the Fact for which he was chiefly attainted. If he had been as old as the Duke of *York*, he had been less excusable in each of these Acts. But I must needs say at those Years, few but himself were so forward as to deserve such a Fate.

An Act of Attainder pass'd against *Henry VI.* in the same manner as had before against *Richard Duke of York*, from whence some remarkable Passages may be extracted not utterly Foreign to our Dispute.

Henry VI. had undoubtedly Possession of the Throne, yet was attainted for Murthers committed by him during that Possession.

He had a Parliamentary Title, Percription, and the Acknowledgment of Foreign States and Princes.

Yet was he attainted for not only the Murther of the Duke of *York* in the Field of Battle fighting for his Crown, but of the Earls of *Rutland* and *Salisbury*, the first of whom had his Brains beat out barbarously by the Lord *Clifford*, and the latter, after surrendring at Discretion, was deliver'd up a Sacrifice to the Common People, and beheaded. The Lord *Bonnevil* and Sir *Thomas Kyriell* surrendred to Mercy, and were cut to Pieces by the Order of the Queen.

He was also accus'd for making a Peace with the King of *Scots*, to exclude the Earl of *March* from the Crown.

Thus were these unjustifiable Facts blasted by the most memorable Acts of our Constitution, by a solemn Declaration of the Lords and Commons, that they were basely and unjustly murther'd.

When *Edward* seem'd fully settled upon the Throne, securely possess'd of what even length of

time had almost adjudg'd away from him. But he issued out a compleat Pardon for the Duke of *Somerſet* and Sir *Ralph Piercy*, and a general one for all thoſe who would ſubmit to him, which may be ſeen in the Appendix.

But indeed this Act of Indemnity was clog'd with an unreaſonable Term in the Opinion of ſome People, who were very unwilling to truſt to a Man's Word and Honour, who had before given ill Specimens of good Nature, and ſome are apt to believe the Wolf lay under Diſguiſe below, while Affection, Clemency and Candor appear'd above.

Indeed by this time both Parties were ſo much exaſperated, that they made it even cuſtomary to cut off Perſons of Honour and Quality in cold Blood: All this was owing to one unhappy Execution of *Thorp* at *Highgate*, which Action drew on the Spirit of Revenge, and prov'd the Death of many brave Men; tho' I think it's very barbarous in a Prince from ſuch a baſe Motive, to run the Hazard of a Friend by Reprisals. The Blood of Loyal Subjects is the richeſt Treafure a Prince can have, which muſt never be brought out but upon the greateſt Occaſions, becauſe 'tis a long time recovering, and requires ſome Years to recruit: However the caſe is alter'd, when a Prince takes upon him the Office; like a Perſon ſent to deſtroy Vermin from Corn, 'tis excuſable in ſuch a caſe, to lay as many traps in the way as he can, and to ſpread his nets to deſtroy them by Shoals.

If the Reader farther meets with barbarous Executions in cold Blood, let him conſider from what Steps that unhappy Conduct proceeded, and let him learn to entertain a juſt Abhorrence of ſuch Measures for the future.

Edward, a Prince form'd for no cruel Councils, but rather for the ſoft Embraces of a Miſtreſs, and

and the Charms of Love, was betray'd unawares into bloody Councils, from which he could not easily withdraw his guilty Steps: This turn'd a gay easy Temper into Moroseness and Severity, and was the Source of those Misfortunes, which plung'd him as deep as he had been rais'd high before.

The Earl of Warwick, who took a Pride in making and unmaking Kings, pull'd down the Power he had rais'd before. Edward was detested, abandon'd by his Subjects and foreign Friends, and us'd in the same manner as some have been since; I could easily find another Edward, another Duke of Burgundy, and another Warwick, if I had Time, Leisure or Opportunity to make Comparisons. The Duke of Burgundy's Conduct is so well describ'd by Habbington, that I should do the World an Injury to oppress it.

This Aspect full of smiling Flattery did the Duke of Burgundy bear to the present Fortune of the State; while upon King Edward he cast such a supercilious Look as the Worlds Wise Men usually do upon Men in Adversity, often sharply he reprehended his so great Carelessness and Neglect of wholesome Advice, which had ruin'd him and oblig'd him to this so wretched Flight, he objected the much Contempt this so great Misfortune would throw upon his Quarrels, and how loth Friends would be to adhere to his present Necessities, since he knew so ill to manage Prosperity, yet remembering that hereafter there might happily be a Change in Fortune, he often chang'd his Humour, and amidst these Reprehensions mingled some passionate Compliments of Love; he protested seriously that he wish'd all Happiness to his Affairs, to advance which he would neglect no Industry, yet he desir'd his Pardon; if for the present he dissembled, considering it might at once draw on a War from his Two most dangerous Neighbours, England and France, against both which Nations should he be necessitated to a Quarrel, he should be very unable to defend himself,
much

much less to serve another : And when a Proclamation was set forth by the Duke, prohibiting his Subjects any way to aid the Pretences of King Edward or his Faction ; and that it was with much Indignation receiv'd by the King ; he protested the Intention of it to be only to betray King Henry to an unsafe Security ; that in the Interim, he might without Suspicion levy a greater Aid for his Designs.

The King fell into the deepest Plunges of Despair, he had no hopes from abroad, and at home an Act of Attainder was pass'd against him, and he who was a Monarch one Day, was a Rebel the next, such are the Vicissitudes of human Affairs.

But as Providence would not suffer the *Lancastrian* Line to prosper long, the exil'd Prince return'd home, march'd to *London*, and took *Henry VI.* Prisoner.

But tho' flush'd with the present Indulgence of Fortune, he had an Enemy at his Heels, whose implacable Malice was not easily conquer'd ; he therefore united the Hearts of the People to him with a general Pardon ; he suffer'd no sorrowful Countenances to obscure the Glories of his Triumph ; but he gave even his most bitter Enemies opportunity to assume disssembled Joys, and appear outwardly his best Friends ; he did not care to fix his Eyes upon unhappy Criminals, and insult Men in Chains, going to receive Sentence of Death ; his natural Temper was mild, merciful and good, and he got more Friends by this Act of Mercy, than by the Terror of his Arms, his Rage and Violence in his hot Blood, were not altogether excusable : But still there is some Difference between that, and having Months to cool upon the matter. His Cruelty at the Battle of *Tewksbury* was the over-boiling of Choler, and the Blood he shed upon that Occasion,
and

and his Violation of the Sanctuary of God was severely afterward return'd upon his Issue.

Perhaps no History of matter of Fact ever so remarkably display'd the just Judgment of God as this.

The King suffer'd the Dukes of *Glocester* and *Clarence*, the Lords *Dorset* and *Hastings*, to murder *Henry* the Sixth's poor unfortunate Son *Edward*, taken Prisoner in that Battle.

Edward the Fourth's Two Sons about the same Age, were murder'd by the same Duke of *Glocester*, who also was the Butcher of his Fellow Executioners, and was himself finally destroy'd by the next surviving Kinsman of the murder'd Prince, if we can without any Prejudice to Justice call him such. (d)

These barbarous Executions were stop'd by a general Pardon, which included all, except the Duke of *Exeter*, the Earl of *Pembroke*, *John Owen* Gentleman, *Thomas Fitz-Harris*, *Hugh Mull*; a very small Number, considering how many had been involv'd in the Guilt of those Confusions.

But one Part of his Conduct must deserve Animadversions upon an Act of Treachery and Cruelty, and will make his Name ever odious while History endures. (n)

The Bastard *Falconbridge* landed in *Kent*, and march'd to *London*. But the City making a too vigorous Defence, he was pleas'd to retire, and with Nine Hundred Men fortified himself in *Sandwich*; but upon the King's Approach with a powerful Army, they sent Sir *George Brook* to acquaint his Majesty with their Desire to return to his Obedience, if they might

(f) Rymer's *Fœdera* Vol. II. p. 719.

(g) *Hattington*.

by his Pardon, be restor'd to their Lives and Liberties. They protested it was no Fear, or present Necessity induc'd them to this Submission, having Confederates enough to relieve them from this extremity ; and for the present, Victuals for six Months, and Ammunition to oppose any Assault. If this Offer might be accepted, they would give up with themselves, the Town and Castle, together with all the Shipping in the Harbour ; if not, Necessity would force them to their own Defence, and if they must die, they would sell their lives, at so dear a rate, that the King might repent his purchase, considering he had kill'd so many, who would have been so bold to have fought his Quarrels, and lost so commodious an Haven Town ; for they were resolved to see both consum'd with themselves, that the Victory might be no Triumph to the Conqueror, and the Conquer'd might have Comfort in their Ruine.

This Proposition was accepted ; but he was so far from standing to this Agreement made with the said Rebels, that he hang'd *Spicing* and *Quintin*, two of the Chief of this Rebellion, at *Canterbury*, and directed a Commission of *Oyer and Terminer* to the Lord *Denham* and Sir *John Fog*, to inquire against all Offenders in the last Rebellion, and to inflict on them either Corporal or Pecuniary Punishments ; but the Commissioner, who understood both the Necessity and Intention of the State, made rather Choice of the latter, knowing Death would but incur the Sentence of Cruelty, and no way advance the King's Benefit.

I must needs say the Resolution of those Men was noble and great ; but it was their Fault to trust a Prince, who had given several Specimens before of dishonourable Practices : But as the Sword was in their own Hands, and they could have sold their Lives dear, *Edward* got no Reputation by sending a Com-

mission to hang them. However, I cannot so heartily pity them, because they had Opportunities of knowing King *Edward* better than to trust him.

I shall bring the Reader next to the Revolution in King *Richard's* time, who was kill'd in Fight, and the House of *Lancaster* once more got the uppermost, and one Usurper devoured another. (b)

Henry the VIIth was no sooner settled upon the Throne, than he attainted not only the deceas'd King *Richard*, but the Chief of his Adherents.

From which Act observe,

First, That the Preamble runs, That the Duke of *Glocester's* Crimes were the shedding of Infants Blood, and naming himself by Usurpation, King *Richard* III. and that those Crimes were committed both against God and the King, notwithstanding at that time King *Richard* was in full Possession of the Throne, and according to some Men, consequently lawful King of *England*.

Secondly, That the Treason consisted in endeavouring the Destruction of *Henry* VII. before he was King *de Facto* in *England*. This was call'd levying War,

First, Against our Sovereign Lord.

Second, And his true Subjects.

Thirdly, Upon this, *Richard* and his Adherents were attainted for High Treason.

Fourthly, It was provided the Lands and Tenements were not compris'd in this Act, which they were seisd or possess'd of in Right of their Wives, but that the Right of the said Lands, &c. so remain in their Wives, and they to be, at their Actions, Recoveries of the same.

This Act perhaps deserv'd Consideration some time since, when the unhappy Gentlemen, who were in

the late Insurrection, had the Fate to be attainted or proscrib'd. *Henry* the VIIth was a Politick Prince, and it is no Shame for a Modern to tread in some of his wise Steps.

Upon the heels of this Act of Attainder, a general Pardon follow'd; not put forth by the means of the Parliament, as the Lord *Bacon* observes, but by Royal Proclamation, as being proud of recommending himself to the love and esteem of his Subjects in such a manner, and as being unwilling to have any sharers in the grateful Acknowledgments of the People.

He exercis'd upon this Occasion no unjust or unnecessary Severity. The Persons attainted, and whose Estates were confiscated, had been guilty of notorious Crimes.

However, those Confiscations satisfy'd his Thirst after Money. He made no Application to his Parliament for new Supplies; he had no back Reckonings or future Prospects to plague them withal.

My Lord *Bacon* observes, it was his peculiar Art to fight more with his Pardons than his Sword, by which Means he secur'd many Victories without hazard or loss of Blood. Thus that Lord observes, That a Pardon did more *Mischief* to *Lovell*, when he Rebell'd, than his *Ordonance*, and without a Blow, gain'd an intire Defeat. (i)

I think none but *Humphrey Stafford* was executed in this Rebellion.

Lambert Simnell next appear'd upon the Stage, was crown'd King at *Dublin*, and Invaded *England* by the direction of the Earl of *Lincoln*, with some others, but he was defeated and taken Prisoner at *Stokefield*.

(i) Ap. N. 20.

The Earl of *Lincoln* and other Leaders in this Rebellion were attainted; but I observe the same Act which attaints them, mentions *Lambert Simmel* with a due regard to his Innocence and Youth, and with an Eye of Pity. He was look'd upon as a Fool and not worth attainting, or at least he did not deserve it, and when he was taken, he had a Post bestow'd upon him equal to his Birth. *Henry* in this shew'd both Prudence and Greatness of Soul. He betray'd no Consciousness by trembling Speeches and hasty Messages to his Parliament, as tho' the Danger lay so much in *Symnell*, as in his Adherents and pretended Friends.

He proceeded against the Rebels more by way of Fines than Halters. He had no Stomach to hang a Man, because it brought no Money into his Coffers, and made him more hated than Rich, and he car'd not how few Enemies he had of any sort whatsoever.

His Policy in regard to the *Cornish* Rebellion is an Instance of this Nature, as my Lord *Bacon* observes. He very well foresaw that it was a dangerous Triplicity to a Monarch, to have the Arms of a Foreigner, the Discontents of Subjects, and the Title of a Pretender to meet.

Nevertheless he took the most prudent Methods to obviate these Mischiefs: He beat the Rebels at *Blackheath* to such purpose, that he either kill'd or took 16000 Men, yet did he execute but Three, and pardon'd the rest by Proclamation, and these Three were the Lord *Audley*, who headed the Rebellion, with *Fammock*, and a Blacksmith who rais'd it; so well did he temper his Passions with Prudence, for this Conduct could not be the effect of good Nature. He was cruel in his Temper, as was plainly shewn in the Murder of the Earl of *Warwick*, but he consulted his own Peace and Safety before his Revenge.

My Lord Bacon has this remarkable Paragraph concerning *Henry the VIIth's Clemency* in this Rebellion.

It was a strange thing to observe the Variety and Inequality of the King's Executions and Pardons, and a Man would think it, at the first, a kind of Lottery or Chance ; but looking into it more nearly, one shall find there was Reason for it, much more perhaps than (after so long a distance of time) we can now discern : in the Kentish Commotion (which was but an handful of Men) there were executed to the number of one Hundred and Fifty, and in this so mighty a Rebellion, but Three ; whether it were that the King put to account the Men that were slain in the Field, or that he was not willing to be severe in a popular Cause, or that the harmless Behaviour of this People (that came from the West of England to the East without Mischief almost, or spoil of the Country) did somewhat mollify him, and move him to Compassion ; or lastly, he made a great difference between the People that did Rebel upon Wantonness, and them that did Rebel upon Want.

Thus far my Lord Bacon, who might in some Measure be in the right ; but I am apt to think the Principle Motive was Experience, which taught the King that the People lov'd him not one whit the more for his Cruelties and Oppressions.

The like Measures he took in *Perkins's* Rebellion, he only executed a very few Ringleaders, and pardon'd all the rest ; even *Perkin* himself was not brought to Town ignominiously with Ropes tied about his Arms, but in a genteel Manner, as tho' the King scorn'd too much to insult the Unfortunate.

I have observ'd several times in the body of this Treatise, that our Kings were never forward to execute the Clergy, as particularly in relation to a Friar engag'd in a notorious Cheat to setup a Person to represent the Earl of *Warwick*, yet would not the King be pre-

prevail'd upon but to Pardon him, altho' his Crime was of the most dangerous Nature, such as touch'd the King in the most tender Part, his Ambition, and the Passion for the Enjoyment of a Crown.

I have also observ'd in the Histories of former Ages, the respect Princes had for Places of Sanctuary, nor would they tear their most bitter Enemies from thence, yet in my remembrance, a Church has been so far from a Sanctuary, that it has been made a Prison, and I believe some *Preston* Gentlemen would have been laugh'd at, if, in their Trials, they had pleaded their having been taken out of a Church. It might have been good Divinity, but wretched Law. (k)

However, God ought not to be contemn'd, because he is able to punish, and how much soever he may be despis'd at a distance, when he frowns and darts his Anger thro' the Skies; the Children of Men are ready to call upon the Mountains to cover them from his Rage.

To return to our purpose from whence this Digression is made, *Henry VII.* died in Peace, and left a flourishing Kingdom behind to a Monster for Cruelty and Violence; yet Monster as he was, he treated the Northern Rebels with Humanity, he offer'd 'em a Pardon, which not being intirely accepted of, the Duke of *Norfolk* acted some Tragedies, which King *Henry* when he heard, clos'd with a General Pardon. Thus the Death of some few put an end to all those Confusions, and even those few were thought by *Henry* too many to perish in cool Blood.

Thus have I given the Reader, a detail of the most remarkable Actions, with Rebels since the Conquest, till those unhappy times came on

(k) Lord Herbert's Life of *Henry VIII.* p. 426, 427, 328.

which are in some Men's Memory, and will endure to their Posterity afterward.

When the grand Rebellion first began, it was more modestly manag'd. But the Surrender at *Reading* open'd a Way for Disorders, which did not stop at plundering Wagons, but in executing Persons, who demanded Quarter and erecting Courts of Judicature pretendedly so call'd, to condemn Men with the Formality of solemn Trials, who had been Loyal to their Prince. Tho' the first Execution of this Nature was, when the King was Prisoner in the Isle of *Wight*; this was Captain *Burley* who dy'd under the Notion of a Traytor, for endeavouring to relieve the King from his Imprisonment, so artful are Rebels in turning the Laws from themselves upon others. (1)

The Rebels by this time began to be inur'd to Blood, as *Colchester* was a particular Instance at that time.

The Town surrender'd to Mercy, with a particular Exception against some few whom the General should pick out.

I observe from hence, that surrendring to Mercy supposes Life, otherwise that Exception would have been unnecessary and vain: They were excluded from the Mercy, and were consequently appointed to die.

In short, to say that surrendring to Mercy supposes, a Man may by such terms be hang'd, is as much to say, Hanging is Mercy, otherwise they have, what they stipulated not for.

The next who suffer'd, were the Marquis of *Hamilton*, the Earl of *Holland* and the Lord *Capel*, Men who had surrender'd to such Mercy, as passes current in these Days.

(1) Lord *Clarendon*, vol. 3. p. 69.

The Earl of *Darby*, perhaps the finest Gentleman in *England*, and a Pattern for his Family to follow, was swallow'd up in the same Fate.

By this time I have brought the Reader within melancholy Views, I have shewn him a Prospect of suffering Loyalty, and he may also by this time learn the Folly of surrendring to the Discretion of Men, who pay no Regard to Laws.

I shall only observe, that when Men are engag'd in a Rebellion, and are afraid of going to the Devil; they may lengthen their Fate upon any mean terms, but if they have drawn their Swords for the sake of their King and of their Country, if they surrender to Mercy, Hanging is too mild a Fate.

Let me only add, that when Men have their Swords in their Hands, 'tis much preferable to die gloriously in the Field, than to be carried in a Cart to *Tyburn*; and 'tis absurd, that a Man should exchange such a Privilege for a worse Consideration, to be hang'd in cool Blood.

What I here assert, I am confident must be true, the greatest Coward on Earth going to a Gallows, would rather wish he had died in the Field.

Can we then believe, that Men with their Swords in their Hands can stipulate to be hang'd; if that was their Intention, I shall cease to be any more their Orator.

When *Oliver's* Usurpation was compleatly annihilated by the Restoration of King *Charles II.* perhaps no Prince ever so tamely pass'd over a Rebellion as he did.

His Speech he made, pressing for the Act of Indemnity was urg'd with a more than Fatherly Affection for his People, as if his Bowels yern'd for sparing his Subjects, and he thought every Hour it was detain'd, was a Delay of the Happiness he propos'd to enjoy by the same; such a Difference is there

there between the Endearments of natural Affection; and the Artificial Caresses of a self-interested Enemy.

We must consider this Speech was made but two Months after the Restoration; yet one would imagine the Act of Grace had been so many Years upon the Anvil, so pressing, so earnest was the King to have it pass'd, tho' they, one would think, should be more concern'd, in interest, than himself to have it done.

His Majesty's Gracious Speech to the House of Peers, the 27th of July, 1660, concerning the speedy passing of the Bill of Indemnity and Oblivion.

My Lords,

“ **W**HEN I came first hither to you, which was
 “ within two or three Days after I came to
 “ *Whitehall*, I did with as much Earnestness as I could,
 “ both by my self and the Chancellor, recommend
 “ to you and the House of Commons, the speedy Dis-
 “ patch of the Act of *Indemnity*, as a necessary
 “ Foundation of that Security we all pray for. I did
 “ since by a particular Message to the House of
 “ Commons again press them to hasten that impor-
 “ tant Work; and did likewise by a Proclamation
 “ publish to all the Kingdom, That I did with Impa-
 “ tience expect that That Act should be presented to
 “ me for my Assent, as the most reasonable and solid
 “ Foundation of that Peace, Happiness and Securi-
 “ ty, I hope and pray for to my self and all my Do-
 “ minions. I will not deny it to you, I thought the
 “ House of Commons too long about that Work,
 “ and therefore, now it is come up to you, I would
 “ not have you guilty of the same Delay. I thank
 “ God, I have the same Intentions and Resolutions
 “ now I am here with you, which I had at *Breda*, and

“ believe that I owe my being here to God’s Blessing
 “ upon the Intentions and Resolutions I then ex-
 “ pressed to have : I will read to you what I then
 “ said.

“ *And to the end that the Fear of Punishment may*
 “ *not engage any, Conscious to themselves of what is*
 “ *passed, to a Perseverance in Guilt for the future,*
 “ *by opposing the Quiet and Happiness of their Coun-*
 “ *try in the Restauration both of King, Peers and*
 “ *People, to their Just, Antient and Fundamental*
 “ *Rights : We do by these Presents Declare, That we*
 “ *do grant a Free and General Pardon, which We*
 “ *are ready upon demand to pass under our Great Seal*
 “ *of England, to all Our Subjects, of what degree or*
 “ *quality soever, who, within forty Days after the pub-*
 “ *lishing hereof, shall lay hold upon this our Grace and*
 “ *Favour, and shall by any Publick Act declare their*
 “ *doing so ; And that they return to the Loyalty and*
 “ *Obedience of good Subjects, excepting only such Per-*
 “ *sons as shall hereafter be excepted by Parliament.)*
 “ *Those only excepted, let all Our Loving Subjects,*
 “ *how faulty soever, rely upon the Word of a King,*
 “ *Solemnly given by this present Declaration, That no*
 “ *Crime whatsoever committed against Us or Our*
 “ *Royal Father, before the Publication of this, shall*
 “ *ever rise in judgment or be brought in Question*
 “ *against any of them, to the least endamage-ment of*
 “ *them, either in their Lives, Liberties, or Estates, or*
 “ *(as far forth as lies in our Power) so much as to the*
 “ *Prejudice of their Reputations, by any Reproach or term*
 “ *of Distinction from the rest of our best Subjects, we*
 “ *desiring and ordaining, that henceforward all Notes*
 “ *of Discord, Separation and Difference of Parties be*
 “ *utterly abolish’d among all our Subjects, whom we in-*
 “ *vite and conjure to a perfect Union among themselves*
 “ *under our Protection, for the Resettlement of our just*
 “ *Rights,*

“ *Rights, and theirs, in a free Parliament ; by which,*
 “ *upon the Word of a King, we will be advis'd.*

“ My Lords, if you do not join with me in extinguishing this Fear, which keeps the Hearts of
 “ Men awake, and apprehensive of Safety and Security ; You keep me from performing my Promise, which if I had not made, I am perswaded
 “ neither I nor You had been now here ; I pray let
 “ us not deceive those, who brought or permitted
 “ us to come together. I knew well there were
 “ some Men, who could neither forgive themselves,
 “ or be forgiven by us, and I thank you for your
 “ Justice towards those, the immediate Murtherers
 “ of my Father, and I will deal truly with you, I
 “ never thought of excepting any other. I pray
 “ think well upon what I have offered, and the benefit you and I have receiv'd from that Offer, and
 “ encourage and oblige all other Persons, by not excluding them from the Benefit of this Act. This
 “ Mercy and Indulgence is the best way to bring
 “ them to a true Repentance, and to make them
 “ more severe to themselves, when they find we are
 “ not so to them. It will make them good Subjects to me, and good Friends and Neighbours to
 “ you ; and we have then all our End, and you shall
 “ find this the securest Expedient to prevent future
 “ Mischief: therefore I do earnestly desire and conjure you to depart from all particular Animosities
 “ and Revenge, or memory of past Provocations,
 “ or that you will pass this Act without other Exceptions, than of those who were immediately guilty
 “ of that Murther of my Father. My Lords, I
 “ have told you my Opinion, and I hope you will
 “ be of the same. If any Persons appear of such
 “ dangerous and obstinate Principles, that the Peace
 “ of the Kingdom cannot be preserved whilst they
 “ have Liberty in it : some other Course may be

“ taken, that they shall not be able to do Hurt ; and
 “ I assure you, there is nothing can enable them to
 “ do so much harm, as the deferring the Passing this
 “ Act.

“ I hope I need say nothing of *Ireland*, and that
 “ they alone shall not be without the Benefit of my
 “ Mercy : they have shewed much Affection to me
 “ abroad, and you will have a Care of my Honour,
 “ and of what I have promised to them. I do again
 “ Conjure you, that you will use all Expedition in
 “ the Dispatch of this Bill.

The Preamble to the Act of Pardon runs thus.

The King's most excellent Majesty taking into his gracious and serious Consideration the long and great Troubles, Discords, and Wars, that have for many Years past been in this Kingdom, and that divers of his Subjects are by occasion thereof, and otherwise, fallen into, and be obnoxious to great Pains and Penalties, out of a hearty and pious desire to put an End to all Suits and Controversies, that by occasion of the late Distractions have arisen or may arise between all his Subjects, and to the intent, that no Crime whatsoever committed against his Majesty or his Royal Father, shall hereafter rise in Judgment or be brought in Question against any of them to the least endamage-ment of them, either in their Lives, Liberties or Estates, or to the Prejudice of their Reputations, by any Reproach or terms of Distinction, and to bury all Seeds of future Discords and Remembrance of the former, as well in his own Breast, as in the Breast of his Subjects one towards another, and in Performance of his Royal and Gracious Words, signified by his Letters to the several Houses of Parliament now assembled, and his Declarations on that behalf publish'd, is pleas'd that it may be enacted, and be it enacted by the King's most

most Excellent Majesty with the Advice and Consent of the Lords and Commons in this present Parliament assembled.

The Reader here may see the Intent and Scope of the said Act, was intirely to quiet the Minds of Men, to allay their Fears, and to bring them if possible to such a State, as tho' they had forgot even that they had been Rebels.

I am sure King *Charles* for his Part seem'd to have forgot, that he was driven into Exile, or who the Persons were that brought down his Misfortunes upon him.

1st. The Act included a General Pardon for all manner of Treasons, Misprisions of Treasons, Murthers, Felonies, Offences, Crimes, Contempts and Misdemeanors whatsoever.

2dly, They were discharged from all Pains of Death, and other Pains, Judgments, Indictments, Convictions, Attainders, Outlawries, Penalties, Escheats and Forfeitures, therefore had or given, or that might accrue for the same.

3dly, A Discharge from all Appeals and all personal Actions, Suits, Molestations and Prosecutions whatsoever, for or by Reason of any Act of Hostility, Trespass, Assaults, Imprisonment, or Breach of the Peace, &c.

4thly, A Discharge of all Appeals, personal Actions, and Causes of such Actions, Suits, Molestations and Prosecutions whatsoever; by Reason of any Act, by the Authority of the late King, or by Order or Ordinance of Parliaments.

5thly, A Discharge of all Wardships and mean Profits un-receiv'd.

Exceptions in this Act were

1st, All Murthers not Comprimis'd in the first Clause of the Pardon.

2dly, All Pyracies and Robberies upon the Seas; not done in Relation to the Differences aforesaid.

3dly, The Vice of Buggery.

4thly, All Rapes and Carnal Ravishments of Women.

5thly, Stealing either Maid or Widow against her Will.

6thly, All Offences made Felonies, as relates to Restraint upon Marriages.

7thly, All Offences of Conjurations, Witchcrafts, Sorceries, Inchantments or Charms.

8thly, All Persons now attainted or convicted of the same Offences.

9thly, Excepted the Accounts of all appointed Sequestrators of Church Lands.

10thly, Excepted all Offences in declaiming the proper Goods of the Kings succinct Stores.

11thly, All Issues, Fines and Amerciaments received by Sheriffs.

12thly, All Jesuits, seminary or Popish Priests, and other disobedient Persons excepted.

13th, Writs of *capias atlegatum* may be directed, or *à scire facias* su'd.

14th, Persons outlaw'd upon a *Capias ad satisfaciendum* excepted.

15th, Informations and Proceedings concerning High-ways excepted.

16th, The Act not to extend to Obligations or Recognizances not forfeited.

I would have the Reader observe, that suitable Penalties were inflicted upon such as should but reproach his Neighbour with what had pass'd; so industrious was the King in healing those Divisions.

The Persons excepted by Name were the King's Judges, and those who in Frocks and Vizors did appear upon the Scaffold at *Whitehall*.

But

But in Regard, Nineteen even of those Persons surrender'd in pursuance of the Proclamation, their Execution was suspended for a time.

Provided, that nothing in the Act should extend to discharge the Lands, Tenements, Goods, Chattels, &c. of *Oliver Cromwell, Henry Greton, John Bradshaw, Thomas Pride, Isaack Erwer, Sir John Danvers, Sir Thomas Maleverer, William Purefoy, John Blakiston, Sir William Constable, Richard Dean, Francis Allen, Peregrine Pelham, John Moor, John Aldred, Humphry Edwards, Sir Gregory Norton, Baronet; John Ven, Thomas Andrew, Alderman deceas'd, Anthony Stapely, Thomas Horton, John Fry, Thomas Hammond, Sir John Bourchier* deceas'd.

I suppose the only Reason why these Men lost their Estates was, because they were dead; for I am sure, as great Villains were left pardon'd alive, whose Hands were afterwards lifted up to repeat the Blow.

Reflections upon this Act are very obvious; perhaps more extensive Mercy was never shewn before, such as would make a Man be apt to think no Person would have suffer'd after that grand Rebellion, if King *Charles* had not been murther'd.

If the Reader insists, that I should give him some Account of King *James's* Executions in the West; I assure him the Vindication of that Monarch will speedily come out, in which it will be prov'd, that he was not be blam'd for those Cruelties, the Spring of all the Villany will be detected, and the Calumny justly fix'd where it ought to be.

After the Revolution, the Royal Scottish Regiment of Horse, and five Hundred of *Dumbarton's* Regiment deserted and march'd towards *Scotland*. *Ginckle* was sent in pursuit of them, and at a Place call'd *Holland's-Gate* in *Lincolnshire*, came up to them. *Billingley* was sent to and fro by *Ginckle* to advise them

them to surrender which at last they agreed to, and were allotted by the Government to a Court Martial to be tried; but *Gingle* repair'd to his Master, and told him, That those Men had surrender'd to Mercy, that his Honour was so far engag'd in the Preservation of their Lives, that if one of those Gentlemen should Perish, he would sling up his Commission: This he urg'd with an uncommon Earnestness and Passion, which prevail'd so far upon the Government, that they thought fit to Pardon them. This Relation I here set down for the benefit of General *Willis*, who was pleas'd not only to acquiesce in the Destruction of those brave Men, who surrendred to his Mercy, but appear'd as an Evidence to take away their Lives.

The next Story which makes a Figure in History, is the Massacre of *Glenco*, which shines in the first Rank of any Relation of that Nature.

The Account transmitted to *London* from *Scotland* is thus:

S I R,

Edinburgh April 20. 1692.

“ THE Account you desired of that strange and
“ surprizing Massacre of *Glenco*, take as fol-
“ lows :

“ *Macjan, Macdonald*, Laird of *Glenco*, a Branch
“ of the *Macdonalds*, one of the greatest Clans
“ (or Tribes) in the North of *Scotland*, came with
“ the most considerable Men of his Clan to Colonel
“ *Hill*, Governour of *Fort William* at *Inverlochy*
“ some Days before. The Expiring of the time
“ for receiving of the Indemnity appointed by Pro-
“ clamation, which as I take it, was the First of
“ *January* last, entreating he would Administer unto
“ him

him the Oaths, which the foresaid Proclamation
 requir'd to be taken, that so submitting himself
 to the Government, he might have its Protection,
 the Colonel receiv'd him with all Expressions of
 Kindness, nevertheless shifted the administering the
 Oaths to him, alledging, that by the Proclama-
 tion it did not belong to him, but to the She-
 riffs, Bayliffs of Regalities, and Magistrates of
 Burghs to administer them, *Mac jan* com-
 plaining that by this Disappointment he might be
 wrong'd, the time being now near the expi-
 ring, and the Weather so extream, and the Ways
 so very bad, that it was not possible for him, so
 soon to reach any Sheriff, he got from Colonel
Hill under his Hand his Protection; and withal
 he was assur'd, that no Orders from the Govern-
 ment against him should be put in Execution,
 until he were first advertis'd, and had time al-
 low'd him to apply himself to King or Coun-
 cil for his own Safety. But the better to make
 all sure, (tho' this might have seem'd Security
 enough at that Time) with all Dispatch imagi-
 nable he posted to *Inverary*, the chief Town of
Argyleshire; there he found Sir *Collin Campbell* of
Ardkinliff, Sheriff of that Shire, and crav'd of him
 the Benefit of the Indemnity according to the
 Proclamation, he being willing to perform all
 the Conditions requir'd. Sir *Collin* at first scrup-
 pled to admit him to the Oaths, the time which
 the Proclamation did appoint, being elaps'd by
 one Day; alledging it would be of no use to
 him, then to take them. But *Mac jan* represented
 that it was not his Fault, he having come in time
 enough to Colonel *Hill*, not doubting, but he
 would have administred the Oaths to him; and
 that upon his Refusal, he made such Haste to *In-*
verary,

“ *verary*, that he might come in time enough, had
 “ not the Extremity of the Weather hinder’d
 “ him ; and even as it was, he was but one Day
 “ after the time appointed, and that would be very
 “ unbecoming the Government, to take Advantage
 “ of a Man’s coming late but one Day, especially
 “ when he had done his utmost to come in time.
 “ Upon this and his threatning to protest against
 “ the Sheriff for the Severity of this Usage, he
 “ administer’d to him and his Attendants the Oaths,
 “ *Mack jan* depending upon the Indemnity granted
 “ to those, who should take them, and having
 “ so done, he went home and liv’d quietly
 “ and peaceably under the Government till the
 “ Day of his Death.

“ In *Jan.* last, a Party of the Earl of *Argyle’s*
 “ Regiment came to that Country : The Design
 “ of their coming was then suspected to be, to
 “ take a Course with those, who should stand out,
 “ and not submit and take the Oaths. The Gar-
 “ rison of *Inverlochy* being throng’d, and *Glenco*
 “ being commodious for quartering, as being
 “ near the Garrison ; those Soldiers were sent thi-
 “ ther to Quarter : They pretended they came
 “ to exact Arrears of Cess and Hearth-money,
 “ a Tax never known in *Scotland*, until laid on
 “ by the Parliament 1690, after the Parliament
 “ of *England* had eas’d themselves of it, e’re they
 “ enter’d *Glenco*, that Laird and his Sons came out
 “ to meet them, and ask’d them if they came as
 “ Friends or as Enemies ; the Officers answer’d as
 “ Friends, and gave their Parole of Honour that
 “ they would do neither him nor his Concerns
 “ any Harm ; upon which he welcom’d them,
 “ promising them the best Entertainment the
 “ Place could afford. This he really perform’d,
 “ as

“ as all the Soldiers confess; he and they liv’d
 “ together in mutual Kindness and Friendship
 “ Fifteen Days or thereabouts; so far was he from
 “ fearing any Hurt from them. And the very last
 “ Day of his Life he spent in keeping Company
 “ with the Commander of that Party, Captain
 “ *Campbell* of *Glen Lyon*, playing at Cards with him
 “ till Six or Seven at Night, and at their parting
 “ mutual Protestations of Kindness were renew’d
 “ some time, that very Day. But whether be-
 “ fore or after their parting I know not, Colo-
 “ nel *Campbell* had these Orders sent him from
 “ Major *Duncanson*, a Copy whereof I here send
 “ you.

S I R,

Ballacholis Feb. 12. 1692.

“ **Y**OU are hereby order’d to fall upon the
 “ Rebels, the *Macdimald*, of *Glenco*, and put
 “ all to the Sword under 70, you are to have
 “ especial Care the o’ld Fox and his Sons do upon
 “ no Account escape your Hands; you are to se-
 “ cure all the Avenues, that no Man escape, this
 “ you are to put in Execution at Five a Clock
 “ in the Morning precisely, and by that time or
 “ very shortly after it, I’ll strive to be at you, with
 “ a stronger Party; if I do not come to you at
 “ Five, you are not to tarry, but to fall on: This
 “ is by the King’s special Command, for the Good
 “ and Safety of the Country, that these Miscre-
 “ ants may be cut off Root and Branch; see that
 “ this be put in Execution without Feud or Fa-
 “ yours

“ vours, else you may expect to be treated as
 “ not true to the King or Government, nor a
 “ Man fit to carry a Commission in the King’s
 “ Service, expecting you will not fail in the ful-
 “ filling hereof, as you love your self, I subscribe
 “ these with my Hand,

Robert Duncanson.

For their Majesties Service to Captain Robert Camp-
bell of Glen Lyon. Duncanson, had receiv’d Or-
ders from Lieutenant Colonel Hamilton, which were
as follows.

S I R,

Ballacholis Feb. 19. 1692.

“ P URSUANT to the Commander in Chief and
 “ my Colonel’s Order to me, for putting in
 “ Execution the Service commanded against the
 “ Rebels in *Glenco*; wherein you with a Party
 “ of the Earl of *Argyle*’s Regiment under your
 “ Command are to be concern’d: You are there-
 “ fore forthwith to order your Affairs, so as that
 “ the several Posts already assign’d you, be by
 “ you and your several Detachments fallen in
 “ Action with, precisely by Five a Clock to mor-
 “ row Morning being *Saturday*, at which time I
 “ will endeavour the same, with those appointed
 “ from this Regiment to other Places; it will be
 “ most necessary you secure those Avenues on the
 “ the South Side, that the old Fox nor none of
 “ his

“ his Cubs get away : The Orders are that none
 “ be spar’d, from you of the Sword, nor the Go-
 “ vernment troubled with Prisoners. This is all
 “ until I see you from

your humble Servant

James Hamilton.

Please to Order a Guard to secure the Ferry and the Boats there, and the Boats must be all on this Side the Ferry after your Men are over. For their Majesty's Service for Major Robert Duncanson of the Earl of Argyle's Regiment.

“ **T**H E Soldiers being dispos’d five and three
 “ in an House according to the number of
 “ the Family they were to assassinate, had their
 “ Orders given them secretly. They had been all
 “ receiv’d as Friends by these poor People, who in-
 “ tending no Evil themselves, little suspected that
 “ their Guests were design’d to be their Murtherers.
 “ At five a clock in the Morning they began their
 “ bloody Work, surpris’d and butcher’d 38 Persons,
 “ who had kindly receiv’d them under their Roofs.
 “ *Mac jan* himself was murther’d, and is much be-
 “ moan’d; he was a stately well favour’d Man,
 “ and of good Courage and Sense; as also the
 “ Laird *Anchintrikin*, a Gentleman of more than
 “ ordinary Judgment and Understanding, who had
 “ submitted to the Government, and had Colonel
 “ *Hill*’s Protection in his Pocket, which he had got
 “ three Months before. I cannot without Horror
 “ represent, how that a Boy about eight Years of
 “ Age was murther’d, he seeing what was done to
 “ others in the House with him, in a terrible Fright
 run

“ run out of the House, and espying Captain *Camp-*
 “ *bell*, grasped him about the Legs crying for Mercy,
 “ and offering to be his Servant all his Life. I am
 “ inform’d Captain *Campbell* inclin’d to spare him,
 “ but one *Drummond* an Officer, barbarously run
 “ his Dagger through him, whereof he died im-
 “ mediately. The R-hearsal of several Particulars
 “ and Circumstances of this Tragical Story, makes
 “ it appear most doleful; as that *Mac jan* was kill’d
 “ as he was drawing on his Breeches, standing before
 “ his Bed, and giving Orders to his Servants for the
 “ good Entertainment of those who murder’d him,
 “ while he was speaking the Words, he was shot
 “ through the Head, and fell dead in his Lady’s Arms;
 “ who through the Grief of this and other bad Usages
 “ she met with, died the next Day. It is not to be
 “ omitted that most of those poor People were
 “ kill’d when they were asleep, and none was allow’d
 “ to pray to God for Mercy. Providence order’d it
 “ so, that that Night was most boisterous, so as a
 “ Party of 400 Men who should have come to the
 “ other End of the *Glen*, and began the like Work
 “ there at the same time (intending that the poor
 “ Inhabitants should be inclos’d and none of them
 “ escape) could not march at length, until it was
 “ nine a Clock, and this afforded too many an Op-
 “ portunity of escaping, and none were kill’d, but
 “ those in whose Houses *Campbell’s* and *Glen Lyon’s*
 “ Men were quarter’d, otherwise all the Males un-
 “ der 70 Years of Age, to the number of 200 had
 “ been cut off; for that was the Order, and it
 “ might have been easily executed, especially con-
 “ sidering that the Inhabitants had no Arms at that
 “ time; for upon the first hearing, that the Soldiers
 “ were coming to the *Glen*, they had convey’d them
 “ all out of the way; for though they relied on
 “ the

“ the Promises which were made them for their
 “ Safety, yet they thought it not improbable they
 “ might be disarm’d. I know not whether to im-
 “ pute it to the Difference of distinguishing a few
 “ Years, or to the Fury of the Soldiers, who being
 “ glutted with Blood stand at nothing, that even
 “ some of 70 Years of Age were destroy’d. They
 “ set all the Houses on Fire, drove off all the Cattle
 “ to the Garrison of *Inverlochy*, viz. 900 Cows,
 “ 200 Horses, and a great many Sheep and Goats,
 “ and there they were divided among the Officers ;
 “ and how dismal may you imagine the Case of the
 “ poor Women and Children was then ; it was la-
 “ mentable, past Expression. Their Husbands and
 “ Fathers and near Relations were forc’d to flee for
 “ their Lives, they themselves were almost stripp’d
 “ and had nothing left them, and their Houses being
 “ burnt, and not one House nearer than six Miles, and
 “ to get thither they were to pass over Mountains and
 “ Wreaths of Snow in a vehement Storm, wherein
 “ the greatest part of them perish’d through Hunger
 “ and Cold. It fills me with Horror to think of poor
 “ stripp’d Children and Women ; some with Child, and
 “ some giving suck, wrestling against a Storm in
 “ Mountains and Heaps of Snow, and at length to
 “ be overcome, and give over, and fall down and
 “ die miserably.

“ You see in *Hamilton’s* Order to *Duncanson*,
 “ there’s a special Caution that none of his Cubs
 “ should escape ; and in *Duncanson’s* Order to Cap-
 “ tain *Campbell* of *Glen Lyon*, that the old Fox nor
 “ none of his Sons should escape : But notwith-
 “ standing all this wicked Caution, it pleas’d God
 “ that the two young Gentlemen, *Mac jans* Sons
 “ escap’d ; for it happen’d that the younger of
 “ those Gentlemen trusted little to the fair Promi-

“ ses

“ fes of *Campbell*, and had a more watchful Eye
 “ over him than his Father or Brother, who
 “ suffer’d themselves by his reiterated Oaths to be
 “ deluded into a Belief of his Integrity ; he having
 “ a strong Impression on his Spirit, that some mis-
 “ chievous Design was hidden under *Campbell’s* spe-
 “ cious Pretences, it made him after the rest were
 “ in Bed, remain in a retired Corner, where he
 “ had an advantageous Prospect into their Guards.
 “ About Midnight perceiving several Soldiers to
 “ enter it, this encreas’d his Jealousy, so he went
 “ and communicated it to his Brother, who could
 “ not for a long time be perswaded there was any
 “ bad Design against them, and asserted, that what
 “ he had seen was not a doubling their Guards in
 “ order to any ill Design, but that being in a strange
 “ Place, and at a distance from the Garrison,
 “ they were to send out Centinels far from the
 “ Guard, and because of the Extremity of the Wea-
 “ ther, reliev’d them often, and that the Men he
 “ saw could be no more but these ; yet he persisting
 “ to say they were not so secure but that it was fit
 “ to acquaint their Father with what he had seen,
 “ he prevail’d with his Brother to rise and go with
 “ him to his Father, who lay in a Room contiguous
 “ to that they were in, though what the younger
 “ Son alledg’d, made do great Impression on his
 “ Father, yet he allow’d his Sons to try what
 “ they could discover ; they well knowing all
 “ sculking Places there, went and hid themselves
 “ near to a Centinel’s Post, where instead of one,
 “ they discover’d Eight or Ten Men ; this made
 “ them more inquisitive, so they crept as near as
 “ they could, without being discover’d, so near as
 “ they could hear one say to his Fellows, that
 “ he lik’d not this Work, and that had he known
 “ of

“ of it, he would have been very unwilling to have
 “ come there, but that none except their Com-
 “ manders knew of it, till within a Quarter of an
 “ Hour. The Soldier added, that he was willing
 “ to fight against the Men of the *Glen*, but it was
 “ base to murder them : But to this was an-
 “ swer’d, let all the Blame be on such as gave the
 “ Orders, we are free, being bound to obey our
 “ Officers. Upon hearing of these Words, the
 “ young Gentlemen retir’d, as quickly and as qui-
 “ etly as they could, towards the House, to inform
 “ their Father of what they had heard : But as
 “ they came nigh to it, they perceiv’d it surround-
 “ ed, and heard Guns discharg’d, and the People
 “ shrieking ; whereupon being unarm’d and totally
 “ unable to rescue their Father, they preserv’d
 “ their own Lives, in hopes yet to serve their
 “ King and Country, and see Justice done upon
 “ those Hell-hounds, treacherous Murderers, the
 “ Shame of their Country, and Disgrace of Man-
 “ kind.

“ I must not forget to tell you, that there were
 “ two of these Officers, who had given their Pa-
 “ role of Honour to *Mac jan*, who refus’d to be
 “ concern’d in that brutal Tragedy, for which they
 “ were sent Prisoners to *Glasco*, where if they re-
 “ main not still, I am sure they were some Weeks
 “ ago.

“ Thus Sir in Obedience to your Commands, I
 “ have sent such Account as I could get of that
 “ monstrous and most inhuman Massacre of the
 “ Laird of *Glenco* and others of his Clan ; you
 “ desire some Proofs of the Truth of the Story,
 “ for you say there are many in *England*, who
 “ cannot believe such a Thing could be done, and
 “ publick Justice not executed upon the Russians ;

“ for they take it for granted, that no such Order
 “ could be given by the Government, and you
 “ say they will never believe it without a down-
 “ right Demonstration. Sir, as to the Government,
 “ I will not meddle with it, or whether these
 “ Officers who murther’d *Glenco*, had such Orders
 “ as they pretended from the Government; the
 “ Government knows that best, and how to vin-
 “ dicate their own Honour and punish the Mur-
 “ therers, who pretended their Authority, and
 “ still stand upon it.

“ But as to the matter of Fact of the Murther
 “ of *Glenco*, you may depend upon it as certain
 “ and undeniable; it would be thought a strange
 “ thing in *Scotland* for any Man to doubt of it,
 “ as of the Death of my Lord *Dundee*, or with
 “ you that the Duke of *Monmouth* lost his Head:
 “ But to put you out of all Doubt, you will
 “ e’re long have my Lord *Argyle*’s Regiment with
 “ you in *London*, and there you may speak with
 “ *Glen Lyon* himself, with *Drummond* and the rest
 “ of the Actors in that dismal Tragedy: And on
 “ my Life, there is never a one of them will de-
 “ ny it to you; for they know it is notoriously
 “ known all over *Scotland*; and it is an Admira-
 “ tion to us, that there should be any One in *Eng-*
 “ *land*. who makes the least doubt of it. Nay,
 “ *Glen Lyon* is so far from denying it, that he brags
 “ of it, and justifies the Action publickly. He said
 “ in the Royal Coffee-house at *Edinburgh*, that he
 “ would do it again; nay, that he would stab any
 “ Man in *Scotland* or in *England*, without asking
 “ the Cause, if the King gave him Orders, and
 “ that it was every good Subject’s Duty so to do;
 “ and I am credibly inform’d, that *Glen Lyon* and
 “ the rest of them have address’d themselves to
 “ the

“ the Council for a Reward of their good Service,
 “ in destroying *Glenco* pursuant to their Orders.

“ There is enough of this mournful Subject; if
 “ what I have said satisfy you not, you may have
 “ what farther Proof, and in what manner you
 “ please to ask it, I am

Sir, your humble Servant.

“ *Note.* The Gentlemen to whom this Letter was
 “ sent, did on *Thursday January 30. 1692*, when the
 “ Lord *Argyle's* Regiment was quarter'd at *Brentford*
 “ go thither, and had this Story of the Massacre of
 “ *Glenco* from the very Men, who were the Actors in
 “ it, *Glen Lyon* and *Drummond* were both there; the
 “ High-lander, who told him the Story, expressing
 “ Guilt, which was visible in *Glen Lyon*, said *Glenco*,
 “ hangs about *Glen Lyon* Night and Day, and you
 “ may see him in his Face.

I shall proceed no farther in this Relation only
 than to observe (*m*) Dr. *Kennet's* judicious Reflections
 upon this Subject, that the Reader may
 take his Choice, which Side he will be pleas'd to
 believe. Dr. *Kennet's* Relation is thus.

In *January 1692*, the King sent Instructions to
 the Commander of his Forces in *Scotland*, touching
 the High-land Rebels, who did not in due time
 accept of the Benefits of his Indemnity, and which
 contain'd a Warrant of Mercy to all without Ex-
 ception, who should offer to take the Oath of Al-
 legiance and come in upon Mercy. Tho' the first
 Day of *January, 1693*, prefix'd by the Proclama-

(*m*) *Kennet's History of England.* Vol. 3. p. 702.

tion of Indemnity was past; contrary to his Majesty's Intention, Thirty Eight of the Inhabitants of *Glencô*, a Town in the North of *Scotland* after they had laid down their Arms, were inhumanly butcher'd in their Beds, their Houses plunder'd, and their Cattle carried away in *February* 1692, which Piece of Barbarity having given the King's Enemies a seemingly just Occasion of reflecting on his Government, the Committee for Security of the Kingdom made a Motion for enquiring into that matter, thereupon his Majesty's Commissioner acquainted the Parliament, that the King had given Commission to several Persons, to make Inquiry into that Affair, which Commission being produc'd, read and agreed to, it was unanimously voted, that the High Commissioners should be desir'd to transmit their humble Thanks, and the Commissioners made their Report to the Parliament of *Scotland*, who came to these Resolutions.

That his Majesty's Instructions to Sir *Thomas Levingstone* and Colonel *Hill*, contain'd no Warrant for the Execution of the *Glenco* Men, that the said Execution was a Murther, that the Master of *Stairs* did exceed the King's Instructions, and that Sir *Thomas Levingstone* had Reason to give the Orders given.

I would have the Reader for his Information observe, that the Time limited by the Indemnity expir'd *Jan. 1st*, 1692. *Jan. 11*, Orders were sent to Sir *Thomas Levingstone*, and Colonel *Hill*; and on *Jan. 16*. these following Instructions sign'd *W. R.* at the bottom, and on the Top.

W. R.

As for *Mac jian* of *Glenco* and that Tribe, if they can be well distinguish'd from the rest of the Highlanders,

landers, it will be proper for the Vindication of publick Justice to extirpate that Set of Thieves.

William R.

Hamilton had his Order from *Levingstone* and *Hill*, *Duncanson* from *Hamilton*, and *Glen Lyon* from *Duncanson*, by whom the Butchery was perform'd.

The Reader is to understand, the Parliament of *Scotland* voted the abovesaid Orders sign'd *W. R.* not to contain a Warrant for the Execution of the *Glenco* Men, and that *Levingston*, who acted in Pursuance of those Orders, could not be to blame.

So that the Murther fell upon *Hamilton*, who it is suppos'd, might have extirpated the *Glenco* Men without destroying them. *Hamilton* was voted guilty of the Murther, order'd to be apprehended, and an Address sent to have both him and the other Actors prosecuted or not, as his Majesty should think fit, and so the Matter fell.

'Tis not my Business to determine on either Side : I have left the Matter to the Reader's Judgment, to judge thereof as he thinks fit ; however I can assure him, none lost their Posts, as being suppos'd only to put a wrong Interpretation upon the Word *Extirpate*, they poor Men could not distinguish between the Letter and Spirit of the Warrant.

I shall leave this melancholy Subject, and repair to King *James* in *Ireland* : Examine how he behav'd himself to his Enemies, whether he entertain'd any Sentiments of Extirpation in *Hamilton's* Sense.

The Garrison of *Londonderry* had perhaps given him as much Provocation as was possible ; and General *Rosen* a Foreigner, issu'd out a very severe Proclamation, in which he threaten'd to put all to the
Sword

Sword who would not Surrender. Which being represented to King *James*, he return'd this mild and rational Answer :

“ That he had heard of the Order before, and that
 “ he had Orders to stop it : That General *Rosin* was a
 “ Foreigner, and us'd to such Proceedings as were
 “ strange to us, tho' common in other Places ; and
 “ that if he had been his own Subject, he would have
 “ call'd him to an Account for it.

Such were the Unfortunate King's Sentiments of putting Garrisons to the Sword, nor was any thing of that Nature done during all that War in cold Blood. All was ended in a fair candid Manner by the Surrender of *Limerick*, in which Colonel *Oxborough*, poor unhappy Gentleman, found more Benefit, than by that of *Preston*.

I could carry the Reader on to the History of the Surrender of *Preston*, but for want of some necessary Materials, I must beg his Pardon. I have not as yet receiv'd an exact Account what is become of those unfortunate Wretches, how many have been sold for Slaves, how many hang'd at *Lancashire* and at *Tyburn*, how many are still in the Prisons of *Liverpool* and *Chester* ; and in *Newgate*, the *Fleet*, and the *Marshalsea* here. Till I have got these Accounts faithfully transmitted, 'tis to no purpose to write a History of that Nature.

Thus have I finish'd the Historical Part of this Relation as far as regards *England*. I shall shut up that Story with a Point of Law, which I shall submit to better Judgments than my own.

An Act pass'd in the 11th of *H. VII.* that no Person that should attend upon the King for the time being, and do him true and faithful Service of Allegiance in the same, for the said Duty and true Allegiance, should

should be attainted or convicted of High Treason, nor of other Offences for that Cause.

The Scope of this Act I take to be, That no Persons should suffer for their Loyalty.

The manner in which this End was to be answer'd was, in providing, that no Person serving the King, for the time should be punish'd; for then, tho' the Title should be disputable, the Loyal Subject could not suffer.

Perhaps some will object, That this Act, granting such an Interpretation to be good, goes too far, because it secures as well the Enemies to the King *De Jure*, as his Friends.

I Answer, That it secures only those whom it ought to secure, that is, those who attended the King in the ordinary Military way; but not those who fell from their Allegiance (as the Act expressly says) *i. e.* not those who had the chief Hand in the Treason.

To conclude, The Instruments should not suffer, but the Prime Agents should.

This Act therefore was primarily calculated for the Benefit of Loyal Men, that in Case of an Usurpation they should not be hang'd for fighting in Defence of their King.

It was secondarily intended that in Case of Usurpations, the poor Instruments, who follow'd the King for the time being, should not be cut off by the Halter or by the Sword.

The Reason, Spirit, and Intent of this Act, I take to be Law, without a slavish Adherence to the Letter thereof.

Therefore in a Civil War, where perhaps neither, or but one of the contending Persons for a Crown, has got such a full Possession as to be call'd a King; nevertheless either of them, so far as their Arms extend,

extend, may be term'd the Power *de Facto* in that Place, and such a Power *de Facto* comes within the Cognisance of this Act.

There is no doubt, but this agrees with the Reason and Scope of the Act, which was to protect Loyal or Unfortunate Men in any Usurpation, of what Nature soever it was.

To apply what has been here said, as the Chevalier *de St. George* was in Possession of the greatest part of *Scotland*, of some part of *England*, Quere, Whether a common Soldier, taken at *Preston*, coming from *Scotland* with his Laird, might not have pleaded the Benefit of that Act.

But if we grant Dr. *Higden's* Scheme to prevail, that Possession gives an absolute and compleat Right (which Scheme in my Opinion is the most abominable one that ever prevail'd) 'Tis evident in such a Case, those that serv'd the Chevalier, could be liable to no Pains of Treason, in serving him at *Preston*, and much less at *Perth*.

I only submit the Sense of this Act to the Judgment of the Lord Chief Justice *Parker*, or any Judge upon the Bench, without determining any thing myself upon the Dispute.

Neither do I Design it as a Reflection upon the Government, because nice Points of Law may sometimes escape the Notice of the wisest Men; but I must needs say, if it had been my Fate to be a Rebel, and tried at *Westminster* for the same, when I was upon my last Legs, I should have insisted upon that Act.

'Tis almost Time to draw toward a Conclusion, and leave to the Impartial Reader, what Judgment he ought to make from what has been said. I am very confident, that not only our *English*, but other profane Histories will furnish Precedents of this Nature.

ture. Sacred History also will come into our Assistance: I would ask whether one Man besides *Absolom*, perish'd in that unnatural Rebellion, which was rais'd to depose a Father, and even his End was attended with his Father's Tears, and the Pangs and Throws of natural Affection; tho' to have spar'd such a Rebel, would I confess have been impolitick in the highest Degree.

Sheba the Son of *Bichri's* Head expiated a general Revolt of the Ten Tribes; there were no publick Executions, no bribing Evidences, nor *Levites* prompted to disgrace their Order by informing and Treachery.

I deliver it as my Opinion, that Men with their Swords in their Hands may justly claim the Law of Arms; and I believe Testimonies will croud in upon me, to prove this Matter beyond Possibility of Answer.

The Law of Arms is no more than a Branch of the Law of Nations, which I define to be an Agreement made between Nations for their mutual Convenience, confirm'd by the successive Approbation of Custom from the Beginning of the World, or at least since Independant Nations have been.

Municipal Laws have the same in Regard to a particular Society, but their Obligation is different, because they have the Sanction of the supreme Power; and the Law of Nations is only founded upon Consent, and the Laws of Justice in general abstracted from positive Laws.

A Prince who breaks the Law of Nations, cuts himself off from the Benefit of Entercourse with his Neighbours, and the mutual Conveniences, such Laws procure.

A Subject who breaks into the Municipal Laws of his Country in such a Manner, as willfully to

oppose himself to their Authority, becomes from that time guilty of Rebellion, and forfeits the Advantages of Society, and is for that Fact cut off from the same. (n)

Cujacius therefore admirably well observes, that those natural Rights, which by the Laws of Nations are strictly inforc'd, are constituted by Divine Providence, and are consequently firm and immutable, whereas the Civil Laws of a Country may be chang'd by the Legislative Power therein.

A Breach of the Law of Nations may be punish'd by an Independant Prince, because he is injur'd, and as (o) *Gregorius Tholosanus* says, *Bella Legitima à jure Gentium inducta*, the Law of Nations allows a lawful War. But the Law of Nations does not allow an unjust War; yet as one Party must be the Aggressor, both the just and unjust have a Claim to the Law of Arms.

A Breach of the Municipal Laws of a Country is punish'd by the civil Magistrate, because he is injur'd; yet both the Sovereign and the Subject shall have the Benefit of the Municipal Laws of the Country, either in condemning or acquitting the suppos'd Criminal.

Thus far the Parallel will hold, and I may draw this Conclusion, that the Justice or Injustice of a War does not affect the contending Parties in their Pretensions to the Law of Arms.

(n) Sic naturalia quædam jura quæ apud omnes gentes per æque servantur, Divina quadam Providentia, constituta semper firma atque immutabilia permanent. Ea vero quæ ipsa sibi quæque Civitas constituit sæpe mutari solent, vel tacito consensu Populi, vel alia postea Lege lata *Cujacius* Tom. lib. 1. p. 4.

(o) *Gregorius Tholosanus*. lib. 19: c. 2.

Therefore those Persons who would urge; that Rebels have no Right to the Law of Arms; because they have no Right to rise in Rebellion, are drove from that Refuge.

I urge therefore, that the same Reasons hold, why Subjects should have the Law of Arms as well as Independant States; the Agreement is founded upon the Eternal Laws of Justice, and it is the same with Subjects.

The Law of Arms is founded upon the Publick Good and the Common Convenience, of Mankind that the Sword may not perform more Execution than is necessary for attaining the Ends, for which Arms are first assum'd, which is always suppos'd to be the defending or acquiring some Right; one of those Pretences are common even to the most Ambitious Monarch in the Universe.

Common Modesty will not let them declare openly to the World, that they are the first Aggressors only for the Sake of Empire, or a Thirst after Destruction.

If therefore a Rebellion arises in a Country; the Prince suppresses it with a View, that it should not be able to disturb the Peace of the Kingdom again.

When an Independant Prince is assaulted by his Neighbour, he defends himself with this Prospect, that he may disarm his Enemy, so far as to prevent his putting him upon another Hazard again.

When he has got these Ends, he would be British in executing his Prisoners, and shedding Blood unnecessarily upon the Ground.

If a Prince therefore, to satisfy the Passion of Revenge, puts to Death Numbers of his Subjects, who have been unfortunately led into Rebellion; he commences a Destroyer of his People, for

(p) *Arumæus* says, *non sua sed publica vota moveant, & subditorum non sua respiciant Commoda*. They are not to sacrifice the Lives and Liberties of their Subjects to their Passions.

I lay down therefore as a Maxim, that no more Blood ought to be shed in any War, than answers the End for which Arms were first assum'd.

This therefore holds good in Civil as in Foreign Wars, because the Utility, Convenience and Justice is equal in both at least, if the Scale does not turn on the Side of the Subject; because I look upon the Blood of such an one to be more precious than that of a more foreign Enemy.

Moreover, this is founded upon the Law of Eternal Reason; 'tis Antecedent to the positive Laws of any Country whatsoever; for tho' there really is no point of time between the Creation of Man, and the Institution of positive Laws; Yet the Law of Nature existed before the Creation, and is previous to any human Institution. The Laws therefore of a particular Country cannot over-rule the Law of Nature and the Law of Nations: If I had therefore surrender'd with my Sword in my Hand, and had been tried afterwards in any Common Court of Judicature, I should have so far demurr'd to the Jurisdiction of the Court, as to have insisted upon the Common Rights of Mankind; I say I would have so done, if I had not been us'd fairly according to my Agreement at my Surrender.

An Instance of this clashing between the Common Law of *England*, and the Law of Nations was evidently shewn, when the Czar of *Muscovy's* Am-

ambassador was arrested here for Debt, there was no positive Laws of our Country could discharge the said Ambassador; nevertheless, by the Law of Nations he could not be detain'd.

I protest, I cannot see what Jurisdiction Common Courts can have over a Prisoner of War.

Perhaps some will object, that my Argument proves too much, *viz.* that Subjects cannot be put to Death for Rebellion.

I protest this is farthest from my Thoughts. If a Rebel is taken in Arms he may be hang'd; for this we have the Authority of not only our Municipal Laws, but of the Law of God, who when he instituted Government put the Power of Life and Death into the Hands of the Sovereign: But the Question remains in what Manner he is taken, I insist upon it, that he has a Right to all the Capitulations of Men in Arms; if he Surrenders to Mercy, he is to have Mercy, or whatever besides he capitulates to have. But if he is taken without any Capitulation of that Nature, the Prince is left to his full Liberty to act as he pleases.

A Trumpeter sent by a Rebel cannot be put to Death, nor in my Opinion can an Hostage regularly be so serv'd, whatever by Mistake was the Fate of my Lord *Derwentwater*, and Colonel *Oxborough*. (q)

Zouch in his *Elementa juris Prudentia*, has very well distinguish'd the two Bases, upon which the Law of Nations is built, *viz.* Reason and Custom: Reason finds out what is useful to Mankind by a Train of Consequences; and Custom confirms all those Deductions by Experiments, and Matters of Fact.

(q) *Zouch Element. juris prudent. p. 114.*

If therefore I can prove the Law of Arms to belong to Subjects from these two Heads, I think it sufficient for my Purpose.

I urg'd before, that the Reason and Justice of granting the Law of Arms to Independant Nations, prov'd also that the same was due to Subjects. However I think we may reduce the Reasons to their proper Heads.

First. That no Blood may be unnecessarily shed.

Secondly, That the Means of Reconciliation may not be intirely cut off.

Thirdly, That some Security, Ease, and Comfort, may be procur'd to the Friends of each contending Parry in Distress.

Fourthly, That Compositions may be made for Towns, Castles, Fortresses, and the like, for the mutual Benefit and Safety of each other.

I insist therefore, that these Reasons hold much more strongly in Civil Wars.

For *First*, If no Quarter is given, even by our Countrymen, and the Son is oblig'd to sheath his Sword in his Father's Bowels, if he meets him in the Field; such Scenes of horror I wish may be banish'd from my native Country to the Banks of the *Elbe*, the *Boristhenes*, or any Place where I was never Born. I may be bold to say, that if all Prisoners taken in Civil War shall be formally condemn'd and hang'd for High Treason, we should have Carrion enough for all the Crows in Christendom to feed upon.

If we suppose King *Charles II.* to have try'd and executed by rigour of Law, all those who had been guilty of High Treason against either himself or his Father, he would not have had Lords enough left to make a Privy Council; Commoners enough to fill a Senate;

Senate ; nor Judges to sit upon a Bench, and administer common Justice to the People.

Those therefore, who distinguish themselves with so much Fury against some People taken at *Preston*, and pronounce an indiscriminative Sentence of hanging them all, should consider, that it would be a great Chance if they would not have imbru'd their Hands in the Blood of their dearest Friends and nearest Relations, if they had put that Sentence in Execution: And I may venture to say, their abhorrence of Rebellion is of a very late standing, and not two Minutes older than the late Reign. I remember the time when they wou'd have been glad to be in the same Circumstances those Gentlemen were in before they were taken, tho' upon a different Account.

As to the *Second*, I wou'd ask these warm Sparks how the Surrendry of *Preston* cou'd have been brought to bear, if the Messenger, who went out from the Town, had been treated as an Enemy. Did not *Will's* condescend to some Usages of War towards them ? Surely when a Nation is engag'd in a Civil War, such Intercourse should not be cut off, as would heal the gaping Wounds, and disperse the Miseries of our Country. There cou'd be no possibility of accommodation, till one Party had compleatly devour'd the other, and this is what some Triumphant Gentlemen would fain be at.

As to the *Third* and *Fourth*, how should Prisoners be exchang'd ; Towns deliver'd up before a Storm, if the Law of Arms is cast behind. The Consequences of which be, that we should have continual Examples of *Drogheda* before our Eyes. (r)

(r) When Oliver *Cromwell* put a whole Town to the Sword.

Thus far I hope we have got Reason on our Side, and if we appeal to Experience, I am pretty sure we cannot well be cast.

I have given a great many Presidents out of *English* History, but least that should not have Antiquity enough to back it, I could carry the Reader from the Building of *Rome*, to the Destruction of that flourishing Empire. The Antients had a strong Notion of Faith to be kept with Rebels, and *Grotius* gives an instance of the *Lacedemonians*, who were suppos'd to have been pursued by Divine Vengeance for violating their Faith given to their Rebel Slaves. (s) *Grotius* gives his Reasons why Subjects have a right to the Law of Arms, for says he, if we grant that the Supream Power of the Prince extends to deprive Subjects of the Law of Arms, it makes void all Agreements of that Nature, and puts the War upon the dismal Issue of having no End without a determining Victory. (t)

Puffendorf intirely agrees with *Grotius*, but has more fully explain'd the Matter ; he says, that if Rebel Subjects are reduc'd by mere Force, they lie at the Mercy of the Prince, which is no more than what I acknowledged before ; but, says he, if any Compact or Agreement precedes, this amounts to a Pardon, and takes away all Pretence of cutting

(s) Id enim jus si ad omnes spectat Res subditorum quid ni etiam ad jus ex promisso Bellico natum : Quod si conceditur videnter inanes fore omnes tales passionones ac proinde Belli nisi per victoriam finiendi spes nulla Grot. de jure bellica pacis lib. 3. c. 19. p. 7.

(t) Sed si per pacta res componatur ipsa negotiū natura ostendit Regem rebellibus delicti gratiam facere sic ut ostensu Rebellionis pacta nequeant irrita reddi Puffend. De Jar. Natura Lib. 3. c. 8. S. 2.

them off their Treason; they are from that time reunited to the Body from which they have been cut off.

Thus have I got the Opinion of *Grotius* and *Puffendorf* on our Side, Men famous in their Generations for their Learning and Knowledge in Matters of this Nature, and I think we have Instances enough in History to support their Assertions.

I would ask any impartial Person, whether when a Prince treats with his arm'd Enemies in a Martial Way, it is not suppos'd, that he deals with them upon Martial Terms. If indeed he imitates those Gentlemen who oppos'd only the Rebellion of their Slaves with Whips, he then may be left to his Discretion what he will do with them when they come under his Power; but the Case is widely different when Men have their Swords in their Hands. The Sword always calls for the Law of Arms, and expects it on whatsoever Side it happens to be.

If a Prince moreover uses his Subjects in such a Manner, they have double Reason to expect it; his previous Actions are a Declaration of his future Conduct: For surely 'tis very hard, that a Prince should treat with the Rebels in a Martial Way till he has got them into a Snare; and then cut them off by the Municipal Laws of the Country; this is making the Martial Law serve only on one Side.

But when we read of a Garrisons surrendring at Discretion, we suppose them upon the same Terms with a Garrison at *Flanders*; and there is not a Serjeant in the Army but knows the Custom of those Countries in that Respect.

Would not the Emperor in *Hungary* have made fine Sport, if he had hang'd all the Rebel *Hungarians* he took in the Towns or in the Field? or what

pure Havock *Philip* and *Charles* in their turns might have made in *Catalonia* and *Valencia*.

To give the Reader an Idea of the Emperors Conduct, I shall give him a short Journal of the *Hungarian* Rebellion, taken from our Gazetts from its Rise to its farther Progress, as far as relates to Submission, Surrendry, and the like.

Gazette Nov. 8. 1703. Letters from *Presburg* on the 24th say, That the Count *de Schlick* was still in the Neighbourhood of that Place, but in a Day or two would begin his March towards the Rebels in order to drive them out of *Levintz*. Several Parties of them have submitted and are come over to him with their Standards upon the approach of the *German* regular Forces.

Nov 11. Gives an account that *Schlick* had attacked *Levintz*, and in the Storm had cut off most of the Garrison, and took 500 Prisoners.

April 13. 1705. We hear that Count *Nadasti* who was appointed by the Emperor, to go into the several Counties of *Hungary* with offers of Pardon has already succeeded in the five chief Counties on this side the *Danube*, viz. *Soproniensis* or *Odenburgh*, &c. all which have accepted the Emperors gracious Offer, and are return'd to their Allegiance. The City of *Guntz* has likewise submitted and receiv'd an Imperial Garrison.

April 17. The Party of the Rebels in *Hungary* is very much weaken'd by the return of most of the Provinces of the lower *Hungary*, which are situated on the Side the *Danube* to their Duty and Allegiance. Yesterday four Officers arriv'd here from *Croatia*, with the welcome News that Lieutenant General *Heister*, having pass'd the *Drave* with a Detachment of 2000 Imperialists, several Thousands of the Rebels who were posted on those Frontiers under the Count

Count *Nitzky*, had by his Perswasion, laid down their Arms and submitted to the Lieutenant General, on promise of the Emperor's Pardon and Protection. They have also surrender'd three strong Castles, &c. On Field Marshal General *Heisters* approach towards *Rapa*, with the main Body of the Imperial Forces, the Magistrates sent out Deputies to acquaint him, that they were ready to submit to the Emperor.

May 4. He had made Choice out of the Malecontents who lately submitted to Lieutenant General *Heister*, on the Frontiers of *Croatia*, such as were best able to bear Arms, whom he had form'd into Three Regiments for the Emperor's Service.

June 19. By our last Advices from General *Heister's* Army, he had caus'd the Towns of *Vesprim* and *Papa* to be burnt, by way of Punishment to the Inhabitants thereof; who after having submitted to the Emperor, were fallen of again to the Malecontents.

Sept. 25. His Imperial Majesty has granted a Cessation of Arms to the Malecontents in *Hungary* till the last of this Month, and Couriers were dispatch'd the 13th Instant to the several Generals and Officers in that Kingdom, to forbear all farther Hostilities. We have since receiv'd Letters of the 14th from *Berezeni*, with an Account of his accepting the Amnesty, and 'tis not doubted but we shall quickly have the same News from *Ragotzki*.

Jan. 15. The Inhabitants of the great Island of *Schut*, and of the largest Part of the Country of *Neitra* are return'd to their Allegiance, and have sent to General *Heister* to beg his Protection.

May 28. 1705. The Emperor has order'd Cardinal *Collonitz*, the Palatine *Esterhafi*, and Count *Palsi*, to signify to the Clergy, and to the several

Counties under their Government, as also to the two Deputies of the *Hungarian* Malecontents; how desirous he is to put an End to the Troubles in *Hungary*, by redressing former Grievances, and observing for the future, all the Conditions of his Coronation Oath.

June 7. Since that time they will have receiv'd Notice of the last Emperor's Death, and of his present Imperial Majesty's gracious Disposition towards redressing their Grievances, which favourable Conjunction it is hop'd they will improve by returning to their Allegiance.

June 7. On the 22d Instant, the Baron *de Szirmai's* Secretary arriv'd here from *Hungary*, with Proposals about the Exchange of Prisoners.

July 5. This Morning Baron *de Szirmai's* Secretary was dispatch'd with necessary Instructions for the Exchange of Prisoners, and within two or three Days the Deputies *Visa* and *Occulluciani* will be sent away with new Proposals of Peace.

Sept. 17. We are expecting with some Impatience from the *Hungarian* Deputies who lately return'd from hence to the Malecontents; an Account of their Dispositions towards an Accommodation.

Jan. 10. General *Goclesburg* with a Detachment of Imperialists possess'd himself soon after of *Samos Tvar*, and General *Viermont* with another Detachment took the Castle of *Gula* the malecontents that were in Garrison in both these Places, having surrendred to Discretion.

Feb. 7 But it is to be hop'd, that the Posture of their Affairs on one Hand, and on the other his Imperial Majesty's Clemency, and the Declaration which is to be sent them from hence by Count *Rechteren* will encline them to take such Resolutions

in

in their Assembly at *Miskotz*, as may put an end to those unhappy Troubles, and Restore the peace and Tranquility of their Native Country.

Feb. 14. We are in great Expectation of what Resolutions the Malecontents in *Hungary* will take in their Assembly at *Miskotz*, which from the Posture of their Affairs, and the Emperors gracious Disposition towards them we have Reason to hope will be such, as may contribute towards putting a Final End to those Troubles.

March 28. 1706. Count *Rechteren* Envoy Extraordinary from the States General went from hence the 11th instant for *Ternau*, with very favourable Proposals from this Court for a Cessation of Arms desir'd by the Malecontents, and we are expecting their Resolutions thereupon.

Feb. 24. Several Counties of *Hungary* which lie on this the *Danube*, have since the Junction of the two Bodies of Imperial Troops commanded by the Generals *Staremburg* and *Rabutin*, quitted that Princes Interest, and submitted to the Emperor.

Sept. 9. 1708. The *Hungarian* Garrison that was at *Neytra* has been conducted to *Newhausell* — General *Oskai* one of the Leaders of the Malecontents has submitted himself and his whole Regiment to the Emperor; Count *Palfi* Ban of *Croatia* having procur'd him the Emperors Pardon. — Our Advices from *Presburg* tells us, that *Anthony Esterhasi* and *Berezedi* two other *Hungarian* Leaders are now actually treating with the Imperial Generals, on Terms from themselves, and the Troops under their Command, and that the conditions of the Treaty are in a Manner settled, they being assur'd of the Emperors Pardon and of being constantly Employ'd in the Imperial Army. Some Advices say that General *Heister* is march'd to *Papa*, to assure

sure those Hungarian Generals of a Punctual Performance of the Conditions stipulated by them, and receive them and their Troops into the Emperor's Service.

Feb. 10. Two Troops of the *Hungarian* Cavalry join'd the Imperialists in those Mountains and threw themselves upon the Emperor's Mercy.

Feb. 28. *Paul Okoluczani*, who was formally employ'd by the Malecontents to solícite their Peace at this Court, but was afterwards upon Suspicion, cast into Prison by them, and reported to be dead ; is come hither within these few Days to emlore the Emperor's Mercy.

Mar. 20. Upon Advice, that the *Hungarians*, had again taken Possession of the Pass of *Schickwar*, the Governor of *Alba Regalis*, march'd thither with a Detachment of Five Hundred and Eighty Men, and oblig'd the Enemy after a warm Dispute to capitulate : The Garrison consisted of Two Hundred and Seventy Men, but was allow'd no other Marks of Honour, than that of marching out under Arms.

July 7 1709. The Emperor does not think fit to revoke in general all the Forfeitures that have already past ; but promises Redress to such particular Persons as shall shew themselves to be injur'd. He thinks it reasonable, that Children should suffer in their Estates by the Forfeiture of their Parents for the Crime of High Treason, but declares that the Innocent Brother or Wife of the Criminal shall not be involv'd in the Forfeiture, — seeing that Prince *Ragotzki* and his Adherents have hitherto pertinaciously refus'd to accept of the Offers of Mercy and Pardon, that have been made them, there remains no other way for putting an End to the present Troubles, but to declare all and every one of those that have taken up Arms, if they do
not

not return to their Allegiance within a Months time; Traytors and Enemies to their Country, and all their Goods to be forfeited to the King's Exchequer.

July 16. Soon after this Action he publish'd a Proclamation, declaring that they who would accept of the Terms of Pardon granted by his Imperial Majesty, should be receiv'd into his Protection. But that they who continu'd obstinate must expect to be treated with the utmost Rigour and Severity.

Aug. 4. We have received Advice that Twenty Four Villages of the Malecontents have lately submitted themselves to his Imperial Majesty, and that they have plunder'd the Country and destroy'd Habitations of those who continue in the Interest of Prince *Ragotzki* Count. *Hannibal Heister* is set at Liberty, after having been Three Years a Prisoner of the Malecontents; at the same time, several of their Principal Officers who were the Emperors Prisoners obtain'd their Enlargement. — The Act for the Confiscation of the Estates of such *Hungarians* as shall continue in Arms, is sent back hither in Order to receive some Concessions from the Emperor in Favour of the Malecontents.

Nov. 24. The Emperor hath lately taken into farther Consideration the Affairs of *Hungary* with Relation to the confiscated Estates of the Malecontents, and hath given farther Conditions, and a longer time to those who shall return to his Obedience, before the Laws are put in Execution against them. The Conduct of this Affair is recommended to the Cardinal of *Sax Zeitz* Primate of *Hungary*, and that Prelate is lately set out for *Presburg*, in Order to publish these his Majesty's gracious Intentions, as the last Instances of his Favour, in case they shall reject his present Offers.

After

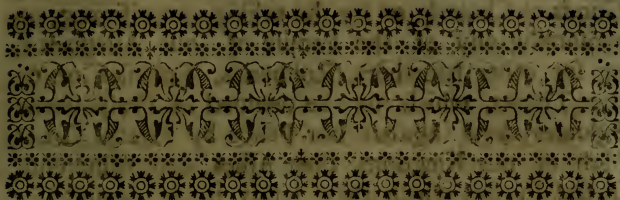
After this in *December*, the Emperor publish'd a Proclamation with fresh Offers of Pardon to all who in one Months Time should return to their Allegiance.

This is sufficient to give the Reader a View of the Conduct of a Natural Prince to his own Subjects; and I defy any Man to produce an Account of the Execution of one *Hungarian* Rebel in cold Blood during all that War.

I might proceed to other Journals to prove my Argument from Matters of Fact: But to prevent nauseating the Reader, I shall conclude.

Claudite jam Rivos Sat prata biberunt.





APPENDIX.

Numb. 1.

Edward by the Grace of God, King of England, Lord of Ireland, and Duke of Aquitain, to all his Bailiffs and Feodals to whom these Presents shall come Greeting,

K NOW ye, that whereas in this our present Parliament, began at *Westminster* Three Weeks after the Nativity of *St. John the Baptist*; by Us, and the Prelates, Earls, Barons and Commons of our Kingdom there, by our Command assembled, it was agreed That no Person, of what Estate or Condition soever, for any Alliance at any time, by Oath, Writing, or in any other Manner

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made,

made, or for the taking, occupying or detaining of any Castles, Towns, Mannors, Lands, Tenements, Goods or Chattels, or for the taking, imprisoning, or ransoming any of the People of our Allegiance, or for other Murthers, Robberies, Felonies or other Things, which may be deemed as Trespases or Felonies done against our Peace by several Great Men of our Kingdom, their Allies, and Adherents, in the Pursuit which they lately made against Sir *Hugh Spencer* the Son, and Sir *Hugh Spencer* the Father, from the first Day of *March* last past, to the *Wednesday* next after the Feast of the Assumption of our Lady, that is to say the 19th Day of *August* next ensuing; shall be neither summoned, nor challenged, apprehended, imprison'd, hinder'd, molested or griev'd, neither in Judgment brought by us, nor by any other at our Suit, nor at the Suit of any other, whosoever he be, either in our Court, or in any other Place; but they shall be acquitted of all such Trespases and Felonies by this Agreement and Assent, except always the said *Hughs*, by for Prisals, have just Cause to recover their Castles, Towns, Mannors, Lands, Guardes, and Matriages, according to the Laws and Customs formerly in force, without any Punishment from us, or Detriment to retrieve the aforesaid lost Time, as is express'd more at large in the aforesaid Agreement and Assent.

Our Will and Pleasure is, that this Agreement be faithfully kept in every Respect, and that our Loyal and Faithful Subject *H. de B.* Earl of *Hereford* and *Essex*, one of the said Great Ones by Allegiance, that at all times whatsoever, by Oath, Writing, or after any other respective Manner, nor for any thing done in that foresaid Suit within

within that said time be arraigned, challenged, apprehended, imprisoned, hindred, molested, nor aggrieved, nor adjudged by us, nor by any other at our Suit culpable, nor at the Suit of any other, that shall be impleaded in our Court or elsewhere against that Tenure of the foresaid Agreement.

See Rymer's *Fœdera*. Vol. 3.



Numb. 2.

The Bishop of *Carlisle's* Pardon from all Treasons.

*The King to all Sheriff's and faithful Subjects
Greeting,*

K Now ye, that *Thomas Merk*, late Bishop of *Carlisle*, was indicted of that, that he and many more condemned to die, falsely, wickedly, and treacherously conspiring, contrary to their Allegiance, by all the Ways and Means could be thought of, how to destroy and murder us and bring our Enemies of *France* to inhabit the Kingdom of *England*: among them, at *London*, viz. at *St. Paul's Church* in the Ward of *Baynards Castle*, and at the little Parish of all Saints in *Douglas's Ward*, and divers other Places within the aforesaid City and elsewhere in the Kingdom of *England* from the Feast of *St. Nicholas* last past until the Feast of the Circumcision of our Lord then next following, and a long time before and after, at different times wickedly and treacherously imagin'd and contriv'd, and were Principal and Capital Leaders, Contrivers and Procurers, and consulting, assisting, and consenting with *Thomas Blount*, Kt. and *Benjamin Sely* Kt. and very many other Traytors of our Kingdom of *England*, lately convicted before us at *Oxford* for the aforesaid Treasons, and according to our *English* Laws condemn'd to die; and furthermore, that they

they with the aforesaid, and very many other Traytors of our Kingdom of *England*, falsly, wickedly, and treacherously, contrary to their Allegiance, binding one another, and adhering to our Adversary and Enemy of *France*, to introduce into our Land of *England* our Enemy, to the intent that We, our Nobles, and all our faithful Subjects should be destroyed, and our Enemies of *France* again inhabit our Kingdom of *England*. On *Tuesday* the Feast of the Epiphany of our Lord last past at *Bampton* in the County of *Oxford*, *Wanting*, *Jarendon* and *Circester*, and divers other Places within the Kingdom of *England*, being arm'd, and appearing in a warlick Manner, as in the Land of War, with Colours display'd, villanously and treacherously made an Insurrection and marched about, and laid in wait at *Windsor*, and other Places, on *Monday* the Vigil of the Epiphany of our Lord, treasonably to kill and murther us, and took with them and imprison'd divers of our faithful Liege Subjects as Prisoners in the Land of War. and compell'd to go with them *viz.* *Walter Hungerford*, Kt. and divers others of our faithful Liege Subjects, who would by no means consent to the aforesaid Treasons; and feloniously plundered them of divers Goods and Cattel to the value of Two Hundred Pounds, and wounded very many, and kill'd some; and furthermore assum'd the Kingly Power without our Authority or Warrant publickly at *Wanting* and divers other Places in the Kingdom of *England*, were they rode about and made Proclamation, That all Men should take up Arms for their King, and their Liege Lord *Richard* late King of *England*, who before, for his Male-administration thro' the whole Course of his Reign, was deservedly Depos'd from the Government of the aforesaid Kingdom; and that same late

late King, did of his own accord voluntarily and absolutely renounce and resign for ever the Crown and Dignity of the Kingdom of *England*; and moreover by them publickly saying and proclaiming, that they would not that we should be their Lord and King, nor would they in any wise suffer us to Reign over them, and by issuing out their Orders to all Men that they should forthwith be ready to ride about with them and commit the aforesaid Treasons and Robberies in the Form aforesaid, contrary to our Dignity, and Destructive of our Kingdom of *England*. And now after all our aforesaid Bishop asserting that he was not guilty of the Treasons and Felonies, we therefore taking into our Consideration that the aforesaid *Thomas Merk* is by no means worthy of the Character of his Pontifical Dignity, and furthermore, being willing out of Reverence to God, and respect to his high Station, to moderate the Rigour of our Royal Justice by your accustom'd Clemency, thinking that 'tis indubitably more pleasing to God sometimes to spare, and be merciful, than continually to exercise our bloody Sentences; of our most especial Grace, and by the Inspection of these Presents we have granted our Pardon to this same Bishop, the Disturber of our Peace, as far as appertains to us, for all manner of Treasons, Murders, Felonies, Misprisions, and Transgressions aforesaid, and also Convictions, Attainders, Judgments, and Executions of Judgments in the Premises, and also for all Treasons, Felonies, Misprisions, and Transgressions done or committed by him before this Time, and also Outlaws, so that he may stand *rectus in Curia*, in case he is examined concerning the Premises.

Witness the King at Westminster, 28 Nov.

Per ipsum regem.

Numb. 3.

Numb. 3.

The General Pardon of *Henry IVth*,
for those Concern'd in the *North-*
thumberland Insurrection.

The King to the High Sheriff of Northampton
Greeting,

THE Tenour of the Pardon granted by us in this present Parliament we send to you in these Words. The King of his especial Grace by the Consent of the Lords Spiritual and Temporal, and at the Request of the Commons in this present Parliament assembled pardoneth all his Lieges and Subjects of the Realm of *England* of the Country of *Wales*, and Marches, for Treasons, Insurrections, Rebellions, Misprisions, Felonies and Trespasles committed before this time, except those who are in Prison or guard on Account of petty Treason, and except Murders and Rapes on Women, Counterfeiters of the King's Seal, Coiners of false Money, and Felons who are corporally detained in Prison, or Mainprise, or Bail; and further, the Sovereign Lord the King doth pardon all his Lieges and Subjects of the Realm of *Wales* and Marches aforesaid, and every of them who are at present Adherents to his Enemies and Rebels, who will return to their Allegiance again within Forty Days after the Proclamation of this Grant and

and Pardon, from all manner of Treasons, Insurrections, Rebellions, Felonies, Trespasses and Mifprifions done or committed by them, or any of them before the Time of their Surrendring to Allegiance, and therefore those of *Wales* may submit themselves to the King or the Prince of *Wales*, or the Duke *D'everwyke*, or the Lieutenants, or Deputies; and those of the Marches of *Scotland* may submit themselves to the King, or to *John Fitz Duroy* Guardian of the East March, or the Earl of *Westmorland* Guardian of the West March of *Scotland*, or the Lieutenants or Deputies; providing nevertheless that *William Serle*, *Thomas Ward* of *Trumpington*, (who pretended to personate King *Richard*) and *Amye* do not and shall not enjoy any Advantage from this Act of Grace and Pardon, because they are expressly excepted out of the Pardon and Grace aforesaid, commanding that the Tenour aforesaid be publickly and without Delay, proclaimed in the County aforesaid, as well within Liberties as without, where it shall be most necessary and expedient, and this you are by no means to omit.

Witness the King at Westminster 20. of March.

The same are directed to all High Sheriffs throughout *England*.

De Pardonatione Rymer's Fædera. Vol. 8.

Numb. 4.

An Order from *Henry IVth* to prevent plundering.

The King to the High Sheriff of Yorkshire Greeting,

WHereas we understand, that many of our Liege Subjects have of their own Rashness presumed to plunder and make Prey of the Goods and Effects of some of our People, as well as of those in the Company of *Thomas* Earl of *Worcester*, and *Henry Percy* Knight deceas'd, and other Rebels; as those belonging to *Henry* Earl of *Northumberland*, who contrary to their Allegiance have rais'd an Insurrection against us, and do daily proceed in making Plunder and Prey of those Goods, altho' every thing of that Nature do of Right belong to us, and not to another: We taking into our Consideration those Spoils and Preys, which if we suffer to be committed will not only bring a Contempt and Prejudice to our selves, but manifestly tend to the Commotion of our Subjects, which we will not, neither ought we to suffer, especially since we are always ready, and always will be mercifully to grant our Favour on this Account, as much as in us lays to all those who in this Part will seek for it; do command and firmly injoyne you, that presently upon the Sight thereof in all Places within your County, where it will be

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most

most necessary and expedient, you do on our Part make Proclamation, that all and every of them who have done and committed these Spoils and Robberys, do without delay restore to those unto whom they belong, all those Goods and Effects they have thus deprived them of, and that no one (of whatsoever State, Degree or Condition he is) do presume after any other manner to make or commit such Prey and Spoils, and moreover, that you make known to all and every of our Liege Subjects on our Part, that it is not our Intention, that any one who was in our Company at the Conquest of the aforesaid Rebels in the Battle near *Shrewsbury*, should be accountable for the Goods and Effects there taken from these said Rebels, and this you must by no means omit on the Penalty which may come upon you.

Witness the King at Pomfret the 4th of August.

The same were directed to the High Sheriff of *Northumberland*, and to the Sheriff of the City of *York*.

Rymer's Fœdera. Vol. 8.

Numb. 5.

Numb. 5.

A General Pardon 23 Henry VI.

*The King to all his Sheriffs or other loving
Subjects, to whom the Presents shall come
Greeting,*

K Now ye, that of our special Grace and good Will, we have pardon'd and releas'd *A.* from all Transgressions, Offences, Misprisions, Contempts and Impeachments, which the said *A.* shall have incurr'd before the Ninth Day of *July* last past, against the Tenour of the Statutes, &c. Notwithstanding the said Statutes. Moreover out of our meer Grace and Favour, we release the said *A.* from any Pretensions we can have against him for Breach of our Peace, for all Treasons, Murders, Rapes, Rebellions, Insurrections, Felonies, Conspiracies, Champarties, bribing of Juries, or other Transgressions, Offences, Omissions, Extorsions or Misprisions, Ignorances, Contempts, Concealments, Faults or Deceits committed by the said *A.* before the Ninth Day of *June*. We also release to the said *A.* all manner of Outlawries, insomuch that he shall be right in our Court, and capable of answering any Objection which shall be made therein against him upon the before-mention'd Accounts. We also release to the said *A.* all Felonies, Waits, Impeachments, Destruction of our Forests, &c. and all other Offences committed before the Ninth Day

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of

of *July*, as also all Fines, Imprisonments or Penalties he could have incurr'd upon these Accounts, and all Causes which concern us, or upon our Account can be alledg'd against the said *A.* We also release him of all Pretensions upon the Account of Alienations, Donations, which concern either us, or our Predecessors before us; and of all Mistakes, Intrusions, or entring upon his Lands without due Course of Law. We likewise pardon the said *A.* from all Penalties incurr'd before the Ninth Day of *June*, by his Offences against us or our Predecessors.

“ The General Pardon proceeds to the End, in
 “ specifying the particular Offences pardon'd, which
 “ upon the Account of their Tautology, I shall not
 “ trouble the Reader with.

Rolls of Parliament 23. Hen. 6.



Numb. 6.

Numb. 6.

The Pardon of JOHN EBE who
adher'd to JACK CADE.*The King, &c.*

K Now ye, whereas that Arch Traytor *John Cade*, who lately stil'd himself *John Mortimer* and Captain of *Kent*, himself with vast and immoderate Numbers of People, in several Places in our Kingdom, and particularly in *Kent*, and the adjacent Places without our Authority and Command, did rashly assemble and gather together, and in contemning our Statutes, Laws, and the Honour and Dignity of our Crown, have incurr'd the Penalties of the said Statutes.

But we considering with our selves, that amongst all the Virtues which are an Ornament to our High Station, Clemency is the Chief, and the more peculiarly adapted to make our Commons asham'd of their past Faults. And moreover, considering that a Prince would so behave himself to his Subjects, as he expects Favour from the Hand
of

of God, the Supream Governor of the World; for these and many other pious Considerations; of our Royal Grace and Clemency, we have releas'd and pardon'd *John Ebe* of the Order of the *Fryars Minors*, (or by what ever Name he is call'd) who contrary to the Laws and Statutes of our Kingdom adher'd to the said Traytor, and associated himself with him, of all the Consequences of his adhering to the said *John Cade*, all the Murthers, Insurrections, Treasons, Felonies, Misprisions, Offences, Impeachments, Confederacies, Conspiracies, Confabulations, Concealments, Omissions, Robberies, Plunderings and Thefts, and all other Deeds, for which he could have been prosecuted; all which we absolutely by these Presents pardon and release him from, and grant him our full and perfect Peace in such a manner, that he shall be *reus in Curia nostra*; to answer to all Accusations or Impeachments, which shall be brought against him upon the Account of any of the said Premises.

Witness the King at Westminster May 18.

*Pr. Brev. de Privat. Sig.
De Pardonacione lib. M. S.*

Numb. 7.

Act of Attainder *Henry VI.*

FOrasmuch as the late King *Henry VI.* against the Honour and Truth that ought to be establish'd in every Christian Prince, dissembling with the Right Noble and Famous Prince *Richard*, Duke of *York* excited against his Promise, and the Form of the Convention, and Concord made between them of, and upon the Right and Title of the said Crown, Royal Power, Dignity, Estate, Pre-eminence and Possession of the said Realm; the Murder of the said Duke, and whereas the said *Henry* Usurper, dissembling the Destruction of other Lords and Persons of the same Realm, by his Writ call'd to assist him, to attend upon his Person, to resist and repress another Commotion of People by his Assent and Will gathered, and wager'd not only in the *North* Parts, but also out of *Scotland*, coming from the same Parts with *Margaret* late called Queen of *England*, and her Son *Edward* late called Prince of *Wales*, intending the extream Destruction of the said Realm; The same *Henry*, Actor, Factor and Provoker of the said Commotion, offer'd a fraudulent Dissimulation in a Field, beside the Town of *St. Alban's* the 17th of *February* last past, not joining his Person and Blood to the Defence, Tuition and Salvation of the same Lords and Persons, coming to assist him by his Authority and Commandment like a Victorious and a Noble Captain, but like a deceivable Coward against Princely and Knightly Duty suddenly,

suddenly, privately, and shamefully refus'd them, suffering and procuring the Effusion of their Blood and horrible Murder and Death, not having thereof Sorrow, Pity, or Compassion, adhering to the said *Margaret* and the Duke of *Somerſet*, and other Lords and Persons that committed the said horrible and cruel Murder of the said Duke of *York*, and of of the Earls of *Rutland* and *Salisbury*, and also of the said People in the said Field near *St. Albans*, giving therefore to the said Duke, and others assisting them therein, a special Land, and thanks from thenceforth, applying to them, and to their outrageous and unlawful Riots and Misgovernance; after that, suffering wilfully the worthy and good Knights *William* Lord *Bonville*, and Sir *Thomas Kyrel* for the Prowess of Knighthood, approved in their Persons, and called to the Order of the Garter, and *William Gower*, Esq; the Bearer of one of his Banners, to whom he made Faith and Assurance, under a King's Word proceeding from his Mouth to keep and defend them from all Hurt, Jeopardy, or Peril to be murder'd; and after that to be tyrannously beheaded, with great Violence, without Process of Law or any Pity, contrary to his said Faith and Promise, abominable in the Hearing of all Christian Princes. Forasmuch also, as *Henry* Duke of *Somerſet*, and also *Thomas Courtney* late Earl of *Devonshire*, &c. accompany'd with the *Frenchmen* and *Scots*, the King's Enemies, falsely and traiterously against their Faith and Allegiance, there waged War against the same King *Edward* their rightful, true, and natural Liege Lord, proposing there and then to have destroy'd him and depos'd him of his Royal Estate, Crown, and Dignity, and then and there to that intent, falsely and traiterously moved Battel against his said Estate, shedding therein the Blood of a great Number

ber of his Subjects, and also *Henry* Duke of *Exeter*, &c. purposing and imagining the Destruction of our said Sovereign Lord King *Edward*, to Depose him of his Royal Estate and Dignity; procured of *James* King of *Scots*, and his Subjects, then Enemies of our said Sovereign Lord; their Aid, Assistance, and armed Power, to enter upon the same our said Sovereign Lord into his said Realm, to put him from the Reign thereof. It be declar'd and adjudged by the Assent and Advise, First, of the Lords Spiritual and Temporal, and Secondly of the Commons being in this present Parliament, by Authority of the same; that the said *Henry*, late called King *Henry* VI. for the Considerations of the great, heinous, and detestable Malice and Offences afore specified, by him committed against his Faith and Leigance to our said Liege Lord King *Edward* IV. his true rightwise and natural Liege Lord, and that he offended and hurt unjustly and unlawfully the Royal Majesty of our said Sovereign Lord; stand, and be by the said Advise and Assent, convicted and attainted of High Treason, &c.

Theatrum Crimin. p. 229. Vol. 4. Mss.

P

Numb. 8.

Numb. 8.

De admittendo in Gratiam.

*The King to our most Dear Cousin Richard
Earl of Warwick, Greeting,*

K Now ye, That as we have taken the Government of our Kingdom of *England*, by a just and true Title, and the Right of Inheritance, and being willing to call together all the Subjects of this our Kingdom to their due Obedience by gentle Means, and being very confident of your Prudence and Faithfulness, we have assigned and do give you full Power and Authority to receive and admit all and every of them who are on the Part of our Adversary *Henry* late King of *England*, either with him, or by themselves, to their Obedience, and our Favour, on Condition they will recede from the part of our abovesaid Adversary, and come to us, and we will take Care to Issue out our Proclamations in proper Places, and moreover we do appoint you over all and every the Mannors, Lands, Tenements, and Goods of the Rebels, and of those that will
not

not come to their Obedience wheresoever they are, or may be found; to be seized and taken into our Hands, and that you Answer for the goings out and coming in, and Profits of the same, and therefore we Command you to make diligent search of the same, and we give to all every High Sheriffs, Mayors, Sheriffs, Constables, and other Officers, our faithful Subjects and Lieges, whomsoever as well within Liberties orders that they be in all things diligent, assistant, and obedient to you in the Execution of the Premises.

*Witness the King at
Westminster, the
12th Day of
March.*

*Rymers Fædera, Vol. 11.
Ann. 1461, p. 474.*

Attainder of *Richard III.*

The Twenty First Day of August in the First Year of the Reign of our Sovereign Lord.

FOrasmuch as every King, Prince and Liege Lord, the more high that he be in State and Pre-eminence, the more singularly he is bound to the Advancement and preferring of indifferent Virtue and Justice, and promoting and rewarding Virtue, by oppressing and punishing Vice.

Wherefore our Sovereign Lord calling unto his blessed Remembrance this high and great Charge adjoyned to his Royal Majesty and Estate, not oblivious, nor putting out of his Godly Mind the unnatural, mischievous and great Perjuries, Treasons, Homicides and Murders, in shedding of Infant's Blood, with many other Wrongs, odious Offences, and Abominations against God and Man, and in especial against our said Sovereign Lord, committed and done by *Richard* late Duke of *Gloucester*, calling and naming himself by Usurpation King *Richard III.* the which with *John* late Duke of *Norfolk*, &c. assembled to them at *Leicester* a great Host, traitterously intending, imagining and conspiring the Destruction of the King's Royal Person, our Sovereign Liege Lord, and they with the same Host, with Banners spread, mightily armed and defenced with all manner of Arms and Guns, Bows, Arrows, Axes,

Axes, and all other manner of Artillery apt or needful to get and advance mighty Battel against our said Sovereign Lord, kept together from the 21st Day of the said Month, and them conducted to a Field within the said Shire of *Leicester*, there by great and continued Deliberation traiterously levied War.

1. Against our said Sovereign Lord.

2. And his true Subjects.

There being in his Service and Assistance under a Banner of our said Sovereign Lord, to the Subversion of this Realm, and Common-wealth of the same, wherefore by the Advice and Assent.

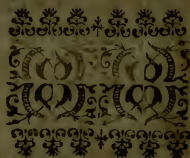
1. Of the Lords Spiritual and Temporal.

2. And of the Commons of this present Parliament assembled.

3. And by the Authority of the same.

Be it enacted, established, ordained, deemed and declared, that the said *Richard* late Duke of *Gloucester*, otherwise called King *Richard III.* *John* late Duke of *Norfolk*, *Thomas* Earl of *Surrey*, &c. stand and be accounted and attainted of High Treason, &c. And also be it ordained and established by the said Advice, Assent and Authority, that if any of the said Persons by this Act attainted, have made any Estate, Feoffment or Discontinuance of any Lands, Tenements, Rents, Possessions, and any other Hereditaments, whereof they be, or any of them were seized or possessed in the Right of any of their Wives,
at

at the time of such Estate, Feoffments, or Discontinuances made to any Person or Persons in any wise; that the said Lands, Tenements, Rents, Possession and Hereditaments, be not comprised in this Act, but utterly be excepted and fore-prised out of the same.



Numb. 10.

Attainder of the Earl of *Lincoln*.

Forasmuch as the 10th Day of the Month of *March* last past, *John* late Earl of *Lincoln*, considering the great and Sovereign Kindness, that our Sovereign Liege Lord, that now is at *Windsor* shewed continually to the said late Earl, but contrary to kind and natural Remembrance, his Faith, Truth, and Allegiance, conspired and imagined the most detestable and lamentable Murder, Death and Destruction.

1. Of the Royal Person of our said Sovereign and Liege Lord

2. And also the Destruction of all this Realm.

And to perform his said malicious Purpose, traitorously departed to the Parties beyond the Sea, and there accompanied himself with many false Traytors, and he comes to our said Sovereign Lord by long times continuing his Malice, procured great Navy from the coasts of *Brabant*, arrived in the Ports of *Ireland*, where he with Sir *Edmund*, and *John* *Beauchamp* Esq., imagined and devised the Defamation and Deposition of our Sovereign Liege Lord, and for the Execution thereof there, the 14th day of *May* last past, the City of *Down*, contrary to his Faith, Truth, and Allegiance, traitorously rebelled, and disclaimed his own natural Liege Lord the King, and caused one

Special a Child of Ten Years of Age, Son to Thomas Symonds late of Oxford Joyner, to be proclaimed, erected, and reputed as King of this Realm. Therefore be it enacted.

1. By our Sovereign Lord the King.

2. By Advice of all the Lords, Spiritual and Temporal.

3. And the Commons of this present Parliament assembled.

4. And by the Authority of the same.

That the said John late Earl of Lincoln, Sr. Henry Beaufort, Thomas Beauchamp Knight, &c. to be captured, judged, and taken as Traytors, and convicted and attainted of High Treason, &c.

